



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शनिवार 2 फरवरी, 2013/13 माघ, 1934

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001

NOTIFICATION

Shimla the 28th January, 2013

No. HHC/Admn.6(23)/74-XIV.—Hon'ble the Chief Justice in exercise of the power vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare the Civil Judge (Junior Division)-cum-JMIC, Chamba as Drawing and Disbursing Officer in respect of the Court of Presiding Officer, Fast Track Court, Chamba and also the Controlling Officer for the purpose of T.A. etc. in respect of establishment attached to the aforesaid Court under head "2014-00-105-03 (Soon Plan)" w.e.f. 29.1.2013 to 3.2.2013.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001**NOTIFICATION***Shimla the 28th January, 2013*

No. HHC/Admn.6(23)/74-XIV.—Hon'ble the Chief Justice in exercise of the power vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare the Civil Judge (Senior Division)-cum-JMIC(II), Shimla as Drawing and Disbursing Officer in respect of the Courts of District and Sessions Judge, Addl. District and Sessions Judge and P.O. Fast Track Court, Shimla and also the Controlling Officer for the purpose of T.A. etc. in respect of establishment attached to the aforesaid Courts under head "2014 Administration of Justice" and "2014-00-105-03 (Soon Plan)" w.e.f. 4.2.2013 to 17.2.2013.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001**NOTIFICATION***Shimla, the 28th January, 2013.*

No. HHC/Admn.6 (24)74-VIII.—The High Court of Himachal Pradesh, in exercise of the powers vested U/S 12(2) of the Code of Criminal Procedure, 1973, has been pleased to appoint Civil Judge (Senior Division)-cum-JMIC(II), Shimla as Additional Chief Judicial Magistrate for Shimla Division, authorizing him to look after the urgent work pertaining to the Courts of District and Sessions Judge/Addl. District and Sessions Judge and Fast Track Court, Shimla w.e.f. 4.2.2013 to 17.2.2013.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 28th January, 2013*

No. HHC/Admn.6 (24)74-VIII.—The High Court of Himachal Pradesh, in exercise of the powers vested U/S 12(2) of the Code of Criminal Procedure, 1973, has been pleased to appoint Civil Judge (Junior Division)-cum-JMIC, Chamba as Additional Chief Judicial Magistrate for Chamba Division, authorizing him to look after the urgent work pertaining to the Courts of District and Sessions Judge and Fast Track Court, Chamba w.e.f. 29.1.2013 to 3.2.2013.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001**NOTIFICATION***Shimla, the 28th January, 2013*

No. HHC/Admn.6(22)74-X.—Hon'ble the High Court of Himachal Pradesh, in exercise of the powers vested in it under proviso to Section 5 of the H.P. Courts Act (Act No. 23 of 1976) and Section 9(4) of the Code of Criminal Procedure has been pleased to appoint Sh. Rakesh Kumar Chaudhary, Joint Director, H.P. State Judicial Academy, Shimla as the Additional District and Sessions Judge for Kinnaur Civil and Sessions Division, with immediate effect.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001**NOTIFICATION***Shimla the 28th January, 2013*

No. HHC/GAZ/14-316/2010.—Hon'ble the Chief Justice has been pleased to grant ex post facto sanction of 10 days' earned leave w.e.f. 31.12.2012 to 9.1.2013 with permission to prefix Sunday fell on 30.12.2012 in favour of Shri Baldev Singh, District and Sessions Judge, Kullu, H.P.

Certified that Shri Baldev Singh had joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Shri Baldev Singh would have continued to hold the same post of District and Sessions Judge, Kullu, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001**NOTIFICATION***Shimla the 28th January, 2013*

No. HHC/GAZ/14-159/84-II.—Hon'ble the Chief Justice has been pleased to grant ex-post facto sanction of 12 days' commuted leave w.e.f. 7.1.2013 to 18.1.2013 in favour of Shri B.L. Soni, District and Sessions Judge (Forest), Shimla, H.P.

Certified that Shri B.L. Soni had joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Shri B.L. Soni would have continued to hold the same post of District and Sessions Judge (Forest), Shimla, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA
NOTIFICATION

Shimla, the 23rd January, 2013

No. HHC/Admn .3 (339)/92.—12 days earned leave on and w.e.f. 21.1.2013 to 1.2.2013 with permission to prefix Sunday falling on 20.1.2013 is hereby sanctioned in favour of Sh. Ram Lal Verma, Secretary of this Registry.

Certified that Sh. Ram Lal Verma is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Sh. Ram Lal Verma, Secretary would have continued to officiate the same post of Secretary, but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA

NOTIFICATION

Shimla, the 23rd January, 2013

No. HHC/Admn .3 (189)/83-I.—10 days earned leave on and w.e.f. 07.2.2013 to 16.2.2013 with permission to Suffix Sunday falling on 17.2.2013 is hereby sanctioned in favour of Smt. Dinesh Chauhan, Assistant Registrar of this Registry.

Certified that Smt. Dinesh Chauhan is likely to join the same post and at the same station from where she proceeds on leave after the expiry of the above leave period.

Certified that Smt. Dinesh Chauhan, Assistant Registrar would have continued to officiate the same post of Assistant Registrar, but for her proceeding on leave.

By order,
Sd/-
Registrar General.

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-2, the 24th January, 2013*

No: Sharm (A) 7-1/2005 (Award) -part-file.—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Shimla of the following cases on the website of Labour & Employment Department:-

Sr. No.	Case No.	Title of the Case	Date of Award
1.	117/2009	Smt./Shri Susheel Kumar V/s Executive Director Rampur & Others	1-1-2013
2.	87/2001	Samtal Workers Union V/S Samtal Colour Ltd.	2-1-2013
3.	18//2012	Smt. Tripta Devi V/s M.D. M/S G.W.S. Health Case Barotiwala.	2-1-2013
4.	12/2011	Sh. Amit Kumar V/s I&PH Shimla & Other.	2-1-2013
5.	57/2009	Sh. Virender kumar V/S M/D M/S Pacific Electronics and Compondant Pvt, Ltd.	2-1-0213
6.	116/2010	Sh. Roop Singh V/S State of H.P. through Secretary Forest with HQ Shimla & Others.	2-1-2013
7.	73/2010	Sh. Tilak Raj V/s M/S S.S. Engg. Bus Stand Baddi.	4-1-2013
8.	115/2009	Sh. Magru Pragapati V/s Birla textile Mills Baddi.	10-1-2013
9.	16/2006	Sh. Naseeb Chand V/s The manager Componet & Equipment Ltd. Baddi.	11-1-2013

By order,
Sd/-

Addl. Chief Secretary (Lab. & Emp.).

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-2, the 24th January, 2013*

No. Sharm (A) 7-1/2005 (Award) -part-file.—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Shimla of the following cases on the website of Labour & Employment Department:-

Sr. No.	Case No.	Title of the Case	Date of Award
1.	287/2002	Smt./Shri Dhain Singh V/s Vice President Jayko India Ltd, Solan.	6-12-2012
2.	285/2002	Sh. Rajesh Kumar V/S -do-	6-12-2012

3.	77//2009	Sh. Bidhi Chand V/s M/S Eicher Tractor Parwanoo.	15-12-2012
4.	51/2007	Sh. Nagin Chand V/s M/S Gujrat Ambuja cement, D/Ghat.	6-12-2012
5.	40/2010	Sh. Rajesh Kumar V/S M/S Isdoyed Engg technoliges Ltd.	5-12-2012
6.	60/2010	Sh. Raj Kumar V/S M/S Anand Aircon Parwanoo.	11-12-2012
7.	54/2011	Sh. Virender Thakur V/s M/S Padmawati Balaji Kasumpti.	20-12-2012
8.	59/2011	Sh. Mohan Singh V/s M/s Diamond Products Ltd. Sirmour.	18-12-2012
9.	33/2008	Sh. Brij Lal V/s M.D. Ambuja Cement Ltd.	6-12-2012
10.	33/2011	Sh. Summan Bala V/s M/s Shivalik Agro poly product & others.	3-12-2012
11.	45/2007	Sh. Virender Kumar Sharma V/s M/S Raja Forging & Gears Ltd. Sai Road, Baddi.	31-12-2012

By order,

Sd/-

Addl.Chief Secretary (Lab. & Emp.).

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 12 of 2011

Instituted on. 2.5.2011.

Decided on 2.1.2013.

Amit Kumar S/o Shri Mathu Ram R/o Village & P.O Gumma, Tehsil & District Shimla,
HP. . . *Petitioner.*

Vs.

1. Executive Engineer, IPH Division No. II, Shimla-3, HP.
2. Sub Divisional Officer, IPH Mechanical Sub Division, Gumma, Tehsil Sunni, District Shimla, HP. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether verbal termination of the services of Shri Amit Kumar S/o Shri Mathu Ram daily wage workman by the Executive Engineer I&PH Division No.II, Shimla-3 w.e.f. 1.12.1998 without serving notice and without complying the provisions of Industrial Disputes Act,

1947 is proper and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to? ”

2. Petitioner filed the claim petition stating that he was engaged as daily waged beldar by the respondents in February, 1998 in IPH (Mechanical) Sub Division, Gumma, District Shimla HP. However, on 30.11.1998, the services of petitioner were disengaged without assigning any reason or without serving any notice. On 27.11.1999 the petitioner had filed OA No. 3369/99 before HP State Administrative Tribunal which was disposed of on 16.11.2004 for want of jurisdiction. Consequently, on 3.12.2004 the petitioner raised demand notice and thereafter conciliation proceedings failed before Labour-cum-Conciliation Officer which led to the present reference. Petitioner challenged his termination on the ground that conciliation failed on the sole ground that petitioner had not completed 240 days in preceding twelve months. However, petitioner stated that after his termination junior workmen to him were retained and respondents also engaged new workmen. So, petitioner challenged his termination against the provisions of Industrial Disputes Act, 1947. Consequently, petitioner prayed to set aside his termination and to reinstate him with all consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein it was stated that the petitioner was not engaged in February, 1998 but he was engaged in June, 1998 for specific work of cleaning of water tanks. On the conclusion of said work, the services of petitioner were not required. It was further stated that in the year of 1998 the petitioner only worked for 136 days. So, he did not complete 240 days in a calendar year prior to his disengagement. As the result there was no question to serve any notice upon him. Respondents stated that only one workman Ritu Raj who was engaged for maintenance work in December, 1997 was retained but he was senior to the petitioner. Hence, respondents prayed for the dismissal of the claim petition.

4. Petitioner did not file any rejoinder. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of petitioner by the respondent w.e.f. 1.12.1998 is in violation of the provisions of Industrial Disputes Act, 1947? . . . OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . . OPP.
3. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief. Reference answered in negative as the services of petitioner have been illegally terminated per operative part of award.

Reasons for finding**Issue No. 1.**

8. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of petitioner w.e.f. 1.12.1998 by the respondents is against the provisions of Industrial Disputes Act, 1947, hence, the same is not sustainable under law, for the reasons to be recorded hereinafter.

9. There is no dispute that petitioner was a daily waged workman under the respondent department. Petitioner has alleged that he was engaged in February, 1998 whereas respondents stated that petitioner was engaged in June, 1998. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts which have been stated by him in claim petition. However, on the other hand, on behalf of respondents RW-1 Shri D.R Sharma, SDO IPH, Shimla was examined who deposed that petitioner was engaged in June, 1998 for cleaning of water tanks. Petitioner could not produce any documentary evidence to suggest that he was engaged in February, 1998. Moreover, from the testimony of RW-1 Shri D.R Sharma as well as mandays chart Ex. RW-1/A, it is clear that petitioner only worked for 136 days in the year of 1998 prior to his termination. Petitioner could not produce any evidence to prove that he worked for 240 days prior to his termination in a calendar year. From the admitted case of petitioner it is clear that he did not work for 240 days prior to his termination, therefore, there was no occasion and legal requirement for the respondents to serve a notice upon him as envisaged under section 25-F of Industrial Disputes Act, 1947.

10. However, at the same time, I find sufficient evidence on record to establish that after the termination of petitioner, respondents engaged new workmen. RW-1 Shri D.R Sharma in his cross-examination has clarified that the seniority list of daily wagers was drawn division wise and he produced in evidence the seniority list Ex. PX. This seniority list is revealing that workmen namely Kewal Ram, Joginder Singh, Narayan Singh, Thakur Dass and Mehar Singh were engaged on 7/2005, 1.1.2004, 1.11.1999, 23.1.2001 and 18.1.2001 respectively. This fact established that new workmen were engaged by the respondents after the disengagement of petitioner. This fact goes to establish that the work was available so, respondents could have easily recalled the petitioner and re-engage him instead of engaging aforesaid new workmen. Here section 25-H of Industrial Disputes Act, 1947 is relevant which makes it mandatory for the employer to give an opportunity to the retrenched workman for reemployment and to offer job or reemployment to him in preference to other persons. RW-1 has stated that when new workmen were engaged no notice to recall the petitioner was given. Therefore, there is violation of section 25-H of Industrial Disputes Act, 1947. As the result, the termination/disengagement of petitioner is not sustainable under law having been made in violation of section 25-H of Industrial Disputes Act, 1947.

11. Accordingly, for the reasons discussed hereinabove, the termination of services of petitioner w.e.f. 1.12.1998 is not sustainable under law being in violation of section 25-H of Industrial Disputes Act, 1947. Hence, this issue is decided in favour of petitioner.

Issue No. 2 .

12. For the reason recorded hereinabove while discussing issue No.1, the termination of services of petitioner w.e.f. 1.12.1998 by the respondents is hereby set aside and the petitioner is held entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to without back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this

issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner w.e.f. 1.12.1998 by the respondents is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages and the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 2nd day of January, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 77 of 2009.
Instituted on. 19.8.2009.
Decided on 15.12.2012.

Bidhi Chand S/o Shri Devi Singh R/o Village & P.O Badhar, Tehsil Bhoranj, District Hamirpur, H.P through Shri J.C Bhardwaj, President HP AITUC, H.Q Saproon, Solan, H.P.
. . *Petitioner.*

Vs.

The Managing Director, M/s Eicher Tractors, Transmission Division (A unit of Tafe Motors and Tractors Ltd.,) Plot No. 29-30, Sector-II Parwanoo, District Solan, H.P. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Hardeep Verma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the dismissal from services of Shri Bidhi Chand S/o late Shri Devi Singh, Machine Operator by the Vice President, Eicher Tractor Transmission Division (A unit of Tafe Motors and Tractors Ltd.) Parwanoo w.e.f. 28.6.2008 vide letter dated 28.6.2008 after serving chargesheet and after holding enquiry is legal and justified? If not to what back wages, seniority, service benefits and relief the concerned workman is entitled to? ”

2. The petitioner has filed the claim petition stating that he was appointed as machine operator by the respondent in August, 1984. He remained in continuous service till 28.6.2008 when he was wrongly and illegally terminated by the respondent on the basis of some enquiry. The

petitioner challenged the enquiry on the ground that enquiry officer did not serve any notice upon him and did not inform the date, place and time of enquiry. Earlier a preliminary enquiry was conducted and its report was also not supplied to the petitioner. The witnesses who were examined by the management, were biased against the petitioner. The witness Surinder Arora did not state anything regarding the charges against the petitioner but he stated about the previous allegations whereas other witness Ashok Sharma, the leave sanctioning authority, stated that petitioner remained absent from 19.5.2005 to 1.6.2005 but on the other hand he had sanctioned the leave of the petitioner. The petitioner further stated that the documents relating to the enquiry in question were not supplied to him with the chargesheet. Further during enquiry, no documents were supplied to him. Hence, the entire enquiry was illegal and against the principles of natural justice. As the result, petitioner prayed to set aside the enquiry report as well as his termination orders and further prayed to reinstate him with all consequential benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein it was admitted that the petitioner was appointed as a workman by the respondent since August, 1984. However, it was stated that the petitioner was habitual absentee as he used to remain absent unauthorisedly and for the same earlier also warnings and punishment of stoppage of increments and suspension were imposed upon him. It was stated that chargesheets dated 8.6.2005 and 26.4.2006 were served upon the petitioner and he could not give any satisfactory reply, consequently, domestic enquiry was conducted wherein the charges levelled against petitioner were proved. The petitioner was informed and he was associated in the enquiry. The enquiry was conducted as per the principles of natural justice. Therefore, legal punishment was imposed upon the petitioner. Hence, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the allegations of respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the services of petitioner w.e.f. 28.6.2008 have been dismissed without holding proper and fair domestic enquiry as alleged? . . . OPP.
2. If issue no.1 is proved to what relief of service benefits, the petitioner is entitled to? . . . OPP.
3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief. Reference answered in negative as the services of petitioner have been illegally terminated per operative part of award.

Reasons for finding

Issue No. 1.

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the petitioner was wrongly and illegally terminated by the respondent without holding proper and fair domestic enquiry. The enquiry in question conducted against the petitioner is against the principles of natural justice, hence, the same is not sustainable under law. Consequently, the termination orders of petitioner on the basis of said enquiry report is liable to set aside for the reasons recorded hereinafter.

10. The petitioner stepped into the witness box as PW-1 and deposed that he proceeded on leave on the first death anniversary of his father-in-law and initially his leave application was recommended and subsequently it was manipulated as not recommended by the Engineer. Thereafter, his wife fell ill, so, he sent Fax mark A for the extension of leave on 24.5.2005. He tendered in evidence the original Fax Ex. P-3 as well as medical certificate of his wife Ex. P-4. His testimony is further revealing that he was served a show cause notice Ex. P-1 and he filed reply Ex. P-2. He has further deposed that during enquiry he submitted written arguments Ex. P-5 but the enquiry officer again re-opened the enquiry and recorded the statement of senior Engineer Ashok Sharma. Then he filed a protest letter dated 28.7.2006 Ex. P-6. The petitioner further deposed that the enquiry officer did not afford opportunity to him to rebut the statement of Ashok Sharma.

11. The respondent has examined Shri G.D Maheshwari, enquiry officer as RW-1. He has stated that he conducted two enquiries against the petitioner. He has stated that the petitioner was associated during enquiries and opportunities were given to him to cross-examine the management witnesses, thereafter, opportunity was given to the petitioner to lead evidence. In his cross-examination, he has admitted that after the closer of the evidence of the parties, one witness on behalf of management was called and examined. But there is nothing in his testimony that the petitioner was informed about the examination of management witness after the closer of evidence of both the parties and opportunity was given to the petitioner to cross-examine said witness.

12. The enquiry proceedings are Ex. PX. These proceedings are revealing that the statement of Shri Ashok Sharma witness was recorded in the end. His statement is revealing since the petitioner and his defence assistant/representative refused to participate in the enquiry, so there was no question of cross-examination. Consequently, the statement of witness was recorded. But proceeding dated 29.7.2006 are not revealing that that the petitioner was heard by the enquiry officer on the point to examine Shri Ashok Sharma as a witness, especially when the evidence of both the parties were over and enquiry was fixed for final arguments. The testimony of petitioner is revealing that Ashok Sharma was examined as management witness when he had already submitted his written arguments. The enquiry proceedings Ex. PX do not reveal the reasons why Shri Ashok Sharma was examined on behalf of management when the evidence of parties were over. The proceedings dated 29.7.2006 are revealing that the petitioner and his defence assistant/representative had refused to participate in the enquiry proceeding. To my mind, this conduct of petitioner is justified because there was apparent biasness on the part of enquiry officer against the petitioner as he did not hear the petitioner on the point of examination of Shri Ashok Sharma as management witness at the fag end of enquiry. Moreover, the proceedings dated 29.7.2006 are silent why the enquiry officer thought it necessary to examine Shri Ashok Sharma at the fag end of enquiry. Therefore, I am satisfied with the arguments advanced on behalf of petitioner that the enquiry officer was biased against the petitioner. On this ground, the enquiry proceedings are not sustainable under law.

13. Further the petitioner has alleged that he was not supplied with the documents along-with chargesheet. Again the testimony of enquiry officer (RW-1) is relevant. In his cross-examination, he has admitted that no document was tagged with the chargesheet. The enquiry proceedings Ex. PX are revealing that on 20.9.2005 on behalf of management documents Ex. M-1 to Ex. M-22 were tendered in evidence. However, on the same day, copies of those documents were supplied to the petitioner. But to my mind, those documents could have been supplied to the petitioner along-with chargesheet and before the commencement of enquiry. As discussed hereinabove, one management witness Shri Ashok Sharma was examined at the fag end of enquiry when the enquiry was fixed for final arguments and this witness also tendered in evidence documents Ex. MW-2/1 to Ex. MW-2/2, copies of these documents were also not supplied to the petitioner.

14. Hence, it stands established on record that on behalf of management no steps were taken for the supply of material/documents to the petitioner in advance before the commencement of enquiry which were relied upon during the enquiry proceeding. I am of the considered opinion that failure to supply the same to the petitioner before the commencement of enquiry would render the entire enquiry proceedings unsustainable under law and the dismissal of the petitioner is also not sustainable as reasonable opportunity to defend was denied to the petitioner. Here, I am supported by the law laid down by Hon'ble Supreme Court of India in the matters of 2011-II-LLJ-627 (SC) and 2002-I-LLJ-544 (SC).

15. Consequently, for the aforesaid reasons, the dismissal from service of petitioner w.e.f. 28.6.2008 is illegal and unjustified in the absence of proper and fair domestic enquiry. Hence, this issue is answered in favour of petitioner.

Issue No. 2.

16. For the reason to be recorded hereinabove while deciding issue no.1, the dismissal from services of petitioner w.e.f. 28.6.2008 by the respondent is hereby set aside and the petitioner is entitled to reinstatement in service with immediate effect with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is answered in favour of petitioner.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the dismissal from services of petitioner w.e.f. 28.6.2008 by the respondent is set aside and the petitioner is ordered to be reinstatement in service with immediate effect with seniority and continuity but without back wages and the reference is decided in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 15th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 33 of 2008
Instituted on. 30.6.2008.
Decided on 06.12.2012.

Brij Lal S/o Shri Khajana Ram R/o Village Bughar, P.O Chakkar, Tehsil Arki, District Solan, H.P. . . *Petitioner.*

Vs.

1. The Ambuja-Darla-Kashlog-Mangoo Transport Co-operative Society Ltd., Darlaghat, Tehsil Arki, District Solan, H.P.
2. M/s Ambuja Cement through its Manager, Darlaghat, Tehsil Arki, District Solan, H.P. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Vijay Sharma, Advocate
For respondent No.1 : Ex-parte.
For respondent No.2 : Shri Peeyush Verma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Brij Lal S/o Shri Khajana Ram by the management of The Ambuja-Darla-Kashlog-Mangoo Transport Co-operative Society Ltd., Darlaghat, Tehsil Arki, District Solan, H.P. w.e.f. 31.8.2006 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what relief of seniority, back wages and other service benefits the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was working as booking clerk with the respondent no.1 w.e.f. 3.3.2004. The petitioner further stated that respondent no.1 was working under the administrative as well as financial control of respondent No. 2. The respondents terminated the services of petitioner on 31.8.2006 without following any procedure and against the provisions of Industrial Disputes Act, 1947. Hence, petitioner prayed to set aside his termination and further prayed that he be reinstated in service with all consequential benefits.

3. Respondent No.1 was served and initially put appearance through Advocate Shri Sanjeev Bhushan. However, subsequently none appeared for respondent No.1, consequently, respondent No.1 proceeded against ex-parte.

4. Respondent No. 2 filed reply wherein preliminary objections as to locus standi, maintainability, supersession of material facts by the petitioner, estoppel and mis-joinder of parties were raised. On merits, respondent no.2 stated that there was no relationship of employer and employee between the parties as the petitioner was never engaged by respondent no.2. So, there was no question of retrenchment of services of petitioner by respondent no.2. Hence, respondent No. 2 prayed for the dismissal of the claim petition.

5. No rejoinder was filed by the petitioner. On the pleadings of the parties, the following issues were framed.

1. Whether the services of the petitioner w.e.f. 31.8.2008 have been terminated by the management of the Ambuja-Darla-Kashlog-Mangoo Transport Co-operative Society Ltd., Darlaghat, Tehsil Arki, District Solan, in an illegal and unjustified manner without complying the provisions of Industrial Disputes Act, 1947 as alleged? . . . OPP.
 2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to and from whom? . . . OPP.
 3. Whether the petitioner has no locus standi against respondent no.2 as alleged? . . . OPR-2.
 4. Whether the claim of the petitioner is not maintainable? . . . OPR-2.
 5. Whether the petitioner is estopped from filing this petition against respondent No.2? . . . OPR-2.
 6. Relief.
6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.
7. I have heard both the parties and gone through the record carefully.
8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Partly yes.

Issue No. 2 Entitled to reinstatement in service by respondent No.1 with seniority and continuity but without back wages.

Issue No. 3 Yes.

Issue No. 4 Yes.

Issue No. 5 No.

Relief. Reference answered in negative as the services of petitioner have been illegally terminated by respondent no.1 per operative part of award.

Reasons for finding

Issue No. 1 .

9. In the light of arguments of both the parties and material on record, I find sufficient evidence to establish that the petitioner was engaged by respondent no.1 and his services were illegally terminated by respondent No.1. There is no relationship of employer and employee between respondent No. 2 and the petitioner.

10. The petitioner has stepped into the witness box as PW-1 and he has categorically deposed that he was working as booking clerk with respondent No.1 society since 3.3.2004. In his

cross-examination, he has admitted that he was never engaged by respondent No. 2. He has also admitted that he did not file any claim against respondent No. 2. This specific testimony of petitioner is sufficient to establish that he was employee of respondent no.1 and was never engaged by respondent No. 2.

11. The petitioner has categorically stated that he worked continuously w.e.f. 3.3.2004 to 31.8.2006 when his services were wrongly and illegally terminated. This testimony of petitioner has gone un-rebutted against respondent No.1 who is the employer of the petitioner. The petitioner has also stated that no notice was served upon him before terminating his services.

12. The aforesaid testimony of petitioner is making it clear that he has worked for 240 days in the preceding year from 31.8.2006. Therefore, his employer i.e respondent No.1 was under the legal obligation to serve a notice upon the petitioner or to pay one month's wages and compensation to the petitioner in lieu of such notice as envisaged under section 25-F of Industrial Disputes Act, 1947. No such steps were taken by the respondent no.1 before terminating the services of petitioner. Hence, the termination of petitioner by respondent No.1 w.e.f. 31.8.2008 is against the provisions of Industrial Disputes Act, 1947 and liable to set aside. Here, Ld. Counsel for petitioner rightly relied upon the law laid down by Hon'ble Supreme Court in the matter of (2010) 5 SCC- 497.

13. Though, the petitioner has alleged that respondent No. 1 was under the administrative and financial control of respondent No. 2. But to this effect, I do not find any evidence on record. Moreover, this plea is not tenable, because respondent No.1 is a co-operative society and it is an independent body. It cannot be believed that a co-operative society being an independent body would be under the administrative and financial control of M/s Ambuja Cement Ltd., which is also another independent body being a company.

14. Accordingly, for the aforesaid reasons issue No.1 is partly answered in favour of petitioner.

Issue No. 2.

15. For the reason to be recorded hereinabove while deciding issue No.1, the services of petitioner have been wrongly and illegally terminated by respondent No.1, so, he is entitled to be reinstated in service with seniority and continuity. Keeping in view facts and circumstances of the case, the petitioner is not entitled to back wages. Hence, this issue is answered in favour of petitioner.

Issue No. 3 & 4.

16. Both these issues are interlinked and can be disposed of by a single finding. For the reason recoded hereinabove while deciding issue No.1, there is no relationship of employer and employee between respondent No. 2 and the petitioner as the petitioner has himself admitted that he was not engaged by respondent No. 2. So, petitioner has no locus standi to file and maintain the petition against respondent No. 2 and the claim petition filed by petitioner is not maintainable against respondent No. 2. Consequently, both these issues are answered in favour of respondent No. 2.

Issue No. 5

17. I do not find any specific evidence on record to show that the petitioner is estopped to file the present petition by his own acts, conduct and deeds. In the absence of specific evidence this issue is answered against respondents.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed against respondent no.1 and as such the termination of services of petitioner by respondent No.1 w.e.f. 31.8.2006 is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages. The reference is decided accordingly in negative against the respondent No.1 only. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 287 of 2002
Instituted on. 16.9.2002.
Decided on 06.12.2012.

Dhian Singh S/o Shri Darshan Singh, through J.C Bhardwaj, President HP AITUC H.Q
Saproon Solan, H.P. . . *Petitioner.*

Vs.

The Vice President, Joyco India Ltd., Village Katha, P.O Baddi, District Solan 173205.
. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Rajeev Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the domestic enquiry conducted by M/s Joyco India Ltd., Baddi District Solan, H.P against Shri Dhian Singh S/o Shri Darshan Singh workman and termination of his services w.e.f. 13.5.2000 on the basis of enquiry report is fair and justified? If not what relief of service benefits including seniority and back wages the above workman is entitled to? ”

2. The petitioner has filed the claim petition on the ground that he was serving in the respondent establishment since 11.11.1995. The workmen had filed a demand notice dated

6.10.1999 which was pending for adjudication. Despite the pendency of demand notice, the respondent illegally terminated the services of petitioner w.e.f. 13.5.2000 on the basis of one-sided illegal enquiry. In fact, the respondent did not inform the petitioner about the initiation of enquiry as well as appointment of enquiry officer. During the pendency of enquiry, no suspension allowance was paid to the petitioner. The chargesheet was not served upon the petitioner and before terminating his services proper service of show cause notice was not effected upon him. Before the initiation of enquiry, the petitioner was not supplied with the copy of documents relied upon by the enquiry officer, hence, the enquiry was conducted against the principles of natural justice. The petitioner also challenged his termination on the ground that it was in violation of section 33(2)-b of the Industrial Disputes Act, 1947 in view of pendency of demand notice dated 6.10.1999. Hence, petitioner prayed to set aside his termination orders and to reinstate him with all consequential benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein preliminary objections as to maintainability of the petition and suppression of material facts by the petitioner were raised. On merits, the respondent admitted that the petitioner was employee of the respondent. However, it was further stated that the petitioner indulged in grave misconduct during the course of his employment. In fact, petitioner remained absent from duty without any sanctioned leave w.e.f. 1.11.1999. On 11.11.1999, the respondent management had issued notice to the petitioner asking him to attend the duties, but in vain. The respondent management again issued a show cause notice dated 24.11.1999 to the petitioner asking him to resume his duties. When petitioner did not join his duties, then chargesheet dated 1.12.1999 was issued to him and he was asked to file the reply within stipulated time, but petitioner did not file any reply. Consequently, Shri R.K Soni was appointed as an enquiry officer and he conducted the enquiry as per the principles of natural justice. The petitioner attended one hearing of enquiry and thereafter chose to remain absent, so ex parte proceedings in enquiry were conducted and charges against the petitioner were proved. Consequently, show cause notice was issued to the petitioner informing him that the respondent intended to impose penalty of dismissal. The petitioner was asked to file the reply but again petitioner did not file any reply. The enquiry report was also sent to the petitioner, hence, petitioner was legally terminated from service in the light of legal and valid enquiry report. The respondent also stated that the petitioner was gainfully employed, hence, he was not entitled to be reinstated with consequential service benefits. Hence, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the petitioner has been illegally terminated from service w.e.f. 13.5.2000 on the basis of enquiry report? If so, its effect? . . . OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . . OPP.
3. Whether the petition in the present form is not maintainable? . . . OPR.
4. Whether the petitioner is gainfully employed? If so, its effect? . . . OPR.
5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.
8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement in service with continuity on the same terms and conditions but without back wages.

Issue No. 3 No.

Issue No.4 Yes.

Relief. Reference answered in negative as the services of petitioner have been illegally terminated per operative part of award.

Reasons for finding

Issue No. 1.

9. In the light of arguments of both the parties and material on record, I am of the considered opinion that the enquiry conducted against the petitioner is not sustainable under law as to my mind principles of natural justice have been violated. As the result, the termination of petitioner from service w.e.f. 13.5.2000 is not sustainable under law.

10. Both the parties have led evidence in support of their respective contentions. Petitioner examined himself in evidence whereas on behalf of respondent four witnesses were examined including the enquiry officer.

11. It is un-disputed fact that the petitioner was employee of the respondent company and he was absent from his duties since 1.11.1999. The petitioner in his cross-examination has admitted this fact that he was absent from duties since 1.11.1999. However, the petitioner has stated that he was not allowed to enter the gate of the premises by the security. It is also undisputed fact that for the aforesaid absence, the petitioner was chargesheeted and was held guilty and consequently he was terminated from service by the respondent.

12. It is the case of the respondent that a letter dated 11.11.1999 was issued to the petitioner asking him to attend the duties but this fact could not be proved with the help of evidence on record. Although, RW-3 Hardeep Rana, the Plant Manager of respondent has deposed this fact but he could not produce the copy of letter dated 11.11.1999 and further it could not be proved by the respondent that copy of said letter was supplied to the petitioner. This witness has further stated that on 24.11.1999 respondent company issued show cause notice Ex. PW-3/A to the petitioner vide postal receipt Ex. RW-3/A-1 and registered AD Ex. RW-3/B and Ex. RW-3/C. But the registered AD does not reveal that the said notice was received by the petitioner. RW-3 has further stated that on 22.12.1999, the respondent decided to initiate enquiry against the petitioner vide letter Ex. RW-3/D and R.K Soni was appointed as an enquiry officer. But again service of this letter upon the petitioner is not proved. So, it is not proved that petitioner was informed about the appointment of enquiry officer.

13. Ex. RP-1 is the chargesheet dated 1.12.1999 which bears the signature of Manager P&A of respondent company. It is not proved on record that copy of said chargesheet was supplied to the petitioner. The statement of petitioner is revealing that no chargesheet was served upon him. However, he has further stated that the chargesheet was shown to him on the gate of factory and he had filed the reply of the same but as per respondent witness, the petitioner did not file any reply to the chargesheet. First of all, burden was upon the respondent to show that the chargesheet was served upon the petitioner and copy of same was supplied to him but his burden could not be discharged by the respondent as there is no documentary evidence on record to show that copy of chargesheet Ex. RP-1 was supplied to the petitioner.

14. The testimony of petitioner is revealing that he was informed about the enquiry on the factory gate but no written letter was received by him. The respondent has examined RW-4 Rajesh Kumar, the enquiry officer who has stated that when he was appointed as enquiry officer, he had issued notice to the petitioner to appear before him but the petitioner did not appear. I do not find any force in this testimony of enquiry officer. The enquiry officer has placed on record the copies of proceedings of enquiry Ex. RW-4/B, Ex. RW-4/C and Ex. RW-4/D. These documents are revealing that the enquiry started on 4.1.2000 and on that day the worker/petitioner was not present. As discussed hereinabove, there is no notice to the petitioner to appear before enquiry officer on 4.1.2000. These proceedings are revealing that the notice along-with chargesheet was served through registered post to the petitioner but it was received back unclaimed. This evidence is sufficient to suggest that the chargesheet and notice was not received by the petitioner. Ex. RW-4/A is revealing that the enquiry officer had held that he would inform worker/petitioner through registered post about the next date of enquiry which was 18.1.2000. Ex. RW-4/C is the copy of proceedings dated 18.1.2000. It is revealing that on said date petitioner appeared before the enquiry officer. The petitioner has stated in his testimony that on 4.1.2000 he had gone to the place of enquiry but the enquiry officer did not turn up, so he wrote letters Ex. P/7 and Ex. P/8 to the Vice President of the respondent company. However, he has admitted that he appeared before the enquiry officer on 18.1.2000 when he made a written request vide Ex. RP-3 to conduct the enquiry in Hindi. This fact has been mentioned by the enquiry officer in proceedings dated 18.1.2000, copy of which is Ex. RW-4/B. These proceedings are revealing that next date of enquiry for evidence was fixed for 3.2.2000. But these proceedings are not revealing that the enquiry officer had supplied the documents to the petitioner as well as list of witnesses. In the absence of such compliance, the principles of natural justice have been violated as the petitioner was unable to defend himself effectively. The copy of proceedings of enquiry Ex. RW-4/D is revealing that on 3.2.2000 two witnesses were examined who tendered in evidence documents M-I to M-VI but these documents were not earlier supplied to the petitioner when he appeared before enquiry officer on 18.1.2000.

15. On 18.1.2000, the enquiry officer did not make any efforts to ask the worker/petitioner whether he intended to appoint any defence assistant. There is nothing on record to show that opportunity was afforded to the petitioner to appoint defence assistant. The denial of any such opportunity is also violation of principle of natural justice.

16. On behalf of respondent it was argued that after the conclusion of enquiry, show cause notice was served upon the petitioner along-with copy of enquiry report informing him about the out-come of enquiry and further petitioner was informed that respondent had decided to dismiss him. But there is no specific documentary evidence on record to show that in fact the copy of enquiry report was received by the petitioner and he also received show cause notice. Therefore, there is no occasion for the petitioner to file reply to enquiry report.

17. The respondent has examined RW-1 Shri K.R Chauhan and RW-2 Shri Ramesh Gupta to prove the extract of attendance register Ex. RA to Ex. RA-6 and letters Ex. RA-7 and Ex. RP-6. But these documents would not make the enquiry report a legal and valid evidence.

18. In the light of my aforesaid discussion, it stands established that prior to the initiation of enquiry against the petitioner for his absence w.e.f. 1.11.1999, no show cause notice was served upon him. Further it is also proved that the chargesheet was not supplied to the petitioner. At the same time, the documents relied upon by the enquiry officer during enquiry were not supplied to the petitioner. The petitioner was not supplied with the list of witnesses by the enquiry officer. Here the law laid down by the Hon'ble Supreme Court in 2011-II-LLJ-627 (SC) is relevant wherein it has been held that:

“It was a settled principle of natural justice that if any material was to be relied in departmental proceedings, a copy of the same must be supplied to the charge sheeted employee so that he might have a chance to rebut the same.”

19. Further, it also stands established that no opportunity was given to the petitioner to appoint defence assistant. All these established facts are sufficient to hold that the enquiry was not conducted in fair and proper manner as the opportunity of being heard was denied to the petitioner. This resulted into violation of principles of natural justice. As the result, the enquiry report Ex. RW-3/E is not sustainable under law and liable to set aside. Consequently, the termination of services of petitioner w.e.f. 13.5.2000 on the basis of aforesaid enquiry report is also not sustainable and is hereby set aside and quashed.

20. On behalf of petitioner, it was argued that no suspension allowance was paid to him during enquiry. But in the light of facts of the case, the petitioner was not entitled to any suspension allowance as he was not suspended and there is no evidence on record to show that after 1.11.1999, he had attended his duties. As per record, the petitioner remained absent w.e.f. 1.11.1999 till he was terminated on 13.5.2000. So, for the aforesaid reason in the absence of any suspension order, the petitioner is not entitled to the suspension allowance.

21. The petitioner also argued that his termination was in violation of section 33(2)-b of Industrial Disputes Act, 1947 as at that time his demand notice dated 6.10.1999 was pending. The copy of demand notice Ex. P/2 is produced on record which is revealing that it was submitted from President and General Secretary of the workers union regarding the working conditions of workmen. There is nothing in it to show that specific demand pertaining to the petitioner was also mentioned. On the top of it, there is nothing on record to show that said demand notice was pending before Conciliation Officer when the termination orders of petitioner were issued. The petitioner did not produce the relevant record from the Labour-cum-Conciliation Officer to prove said allegation. Hence, in the absence of any evidence in this regard, the violation of section 33 (2)-b of Industrial Disputes Act, 1947 is not proved.

22. However, for the reasons discussed hereinabove, the termination of services of petitioner w.e.f. 13.5.2000 is not sustainable under law being against the principles of natural justice. Accordingly, this issue is decided in favour of petitioner.

Issue No. 2 & 4.

23. Both these issues are interlinked and can be disposed of by a single finding.

24. For the reason to be recorded hereinabove while discussing issue no.1, the termination of services of petitioner w.e.f. 13.5.2000 by the respondent is hereby set aside and the petitioner is held entitled to be reinstated in service with continuity on the same terms and conditions. The petitioner is not entitled to the back wages as I find sufficient material on record to suggest that petitioner is gainfully employed.

25. Although, the respondent has not produced the specific evidence to establish that at the relevant time the petitioner was gainfully employed but here the cross-examination of petitioner is relevant wherein he has admitted that he was having kids who are studying in School. At the same time he has also admitted that he has got landed property. These facts are sufficient to suggest that the petitioner was having sufficient income. So, it can be safely concluded that after his termination, the petitioner was gainfully employed. Accordingly, in the light of my aforesaid discussion, issue No.1 is answered in favour of petitioner whereas issue no.4 is answered in favour of respondent.

Issue No. 3

25. From the careful perusal of the record, there is nothing to suggest that the petition in the present form is not maintainable. Hence, this issue is decided against the respondent.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner w.e.f. 13.5.2000 by the respondent is set aside and the petitioner is ordered to be reinstated in service with continuity on the same terms and conditions. The petitioner is not entitled to the back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 51 of 2007
Instituted on. 25.6.2007.
Decided on 06.12.2012.

Nagin Chand S/o Shri Gulaba Ram R/o Village Gyana, P.O Mangoo, Tehsil Arki, District Solan, H.P. . . *Petitioner.*

Vs.

3. Senior Joint Deputy Chairman, M/s Gujrat Ambuja Cement (Unit Himachal) P.O Darlaghat, Tehsil Arki, District Solan, H.P.

4. Krishan Kumar Rajgaria (Contractor) C/o M/s Gujrat Ambuja Cement (Unit Himachal) P.O Darlaghat, Tehsil Arki, District Solan, H.P. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Virender Singh, Advocate
For respondent No.1 : Shri Peeyush Verma, Advocate.
For respondent No.2 : None.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Nagin Chand S/o Shri Gulaba Ram ex-driver by the management of M/s Gujrat Ambuja Cement (Unit Himachal) P.O Darlaghat, Tehsil Arki, District Solan, H.P. (2) Shri Krishan Kumar Rajgaria (Contractor) C/o M/s Gujrat Ambuja Cement (Unit Himachal) P.O Darlaghat, Tehsil Arki, District Solan, H.P. w.e.f. 3.4.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim stating that he was engaged as driver by the respondents on 18.1.1999 and he did his duties continuously till 3.4.2004 when his services were wrongly terminated without any notice. Petitioner stated that he completed 240 days in the preceding twelve months. Therefore, he challenged his termination on the ground that it was against the provisions of Industrial Disputes Act, 1947. As the result, petitioner prayed to set aside his termination and he be reinstated in service with all consequential benefits.

3. Respondent No. 1 filed reply wherein preliminary objections as to locus standi, cause of action, supersession of material facts, estoppel and no relationship of employer and employee between the parties were taken. On merits, respondent no.1 denied that the petitioner was engaged as driver on 18.1.1999 and he worked under the replying respondent till 3.4.2004. It was also denied that the petitioner had completed 240 days in the preceding calendar year under the replying respondent. It was stated that some time the contractor used to employ the workmen but replying respondent was having no concern with those workmen employed by the contractor. Hence, respondent no.1 prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of petitioner by the management of Gujrat Ambuja Cement, Darlaghat and Shri Krishan Kumar Rajgaria contractor w.e.f. 3.4.2004 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? . . . OPP.
2. If issue no.1 is proved to what relief of service benefits the petitioner is entitled to? . . . OPP.
3. Whether the petitioner has no locus standi to file and maintain his case? . . . OPR.
4. Whether the petitioner is estopped to file the present petition by his own act, conduct and deeds? . . . OPR.
5. Whether there is no employee-employer relationship between the petitioner and replying respondent? . . . OPR.
6. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1	Partly yes.
Issue No. 2	Entitled to reinstatement in service by respondent No. 2 with seniority and continuity but without back wages.
Issue No. 3	Partly no.
Issue No. 4	No.
Issue No. 5	Partly yes.
Relief.	Reference answered in negative as the services of petitioner have been illegally terminated by respondent No. 2 per operative part of award.

Reasons for finding

Issue No.1 & 5.

9. Both these issues are interlinked and can be disposed of by a single finding.

10. After hearing both the parties and going through the record carefully, I find sufficient evidence on record to establish that the petitioner was engaged as driver by respondent No.2. There is no evidence to establish that petitioner was directly engaged by respondent No.1. Therefore, there is no relationship of employer and employee between the petitioner and respondent No.1.

11. The petitioner has stepped into the witness box as PW-1. He has stated that he used to ply vehicle of respondent No.1 bearing no. HP 51- 1239. He also produced the log book of the vehicle Ex. PA. He also stated that he was removed from service by respondent No.1 without any notice and payment of compensation. In his cross-examination, he has stated that no appointment letter was issued to him by respondent No.1. He has also stated that his wages were being paid by the respondent No. 2. His testimony is also revealing that his driving test was conducted by one Kamal Kumar through respondent No. 2.

12. The petitioner did not produce his appointment letter issued by respondent No.1. The log-book of vehicle no. HP 51- 1239 Ex. PA would not make petitioner employee of respondent No.1. In the light of aforesaid testimony of petitioner, I have no hesitation to hold that he was appointed by respondent no.2 and it was respondent No. 2 who used to pay wages to the petitioner. Therefore, petitioner was employee of respondent No. 2 and he was never engaged by respondent No.1. As the result, I find substance in the objection taken by respondent no.1 that there was no relationship of employer and employee between petitioner and respondent No.1.

13. On behalf of petitioner strong reliance was made on the testimony of PW-2 Gian Chand Verma, the Assistant from the office of P.F Commissioner who proved the EPF slips Ex. PW-2/A and Ex. PW-2/B of the petitioner. These EPF slips are revealing the name of employer to be Gujrat Ambuja Cement Ltd. But to my mind, this fact alone would not make the petitioner employee of respondent No.1 i.e Gujrat Cement Ltd. Here the cross-examination of PW-2 is relevant. He has stated in his cross-examination that EPF slips Ex. PW-2/A and Ex. PW-2/B fall under the sub code head. He has also admitted that the subscription of employee of Gujrat Ambuja Cement is deducted under the PF head whereas the subscription of employee of contractor used to

be deduced under the PF sub head code. He has further clarified that initially there was no separate code for the contractors. It was only for the last 5/6 years, the separate code was given to contractors. Therefore, the testimony of this witness is specific evidence to show that in fact the EPF subscription of petitioner was deducted under sub code which was issued in favour of contractor of respondent No.1.

14. Therefore, in the light aforesaid evidence, it is hereby held that the petitioner was employee of respondent No. 2 who was the contractor. In the regard, I am in agreement with the testimony of RW-1 Sunil Kumar, Assistant Manager of respondent no.1. He has categorically stated that the petitioner was employed by the contractor to whom the sub code was allotted by the Provident Fund Commissioner.

15. The respondent No. 2 has not contested the claim of the petitioner and there is no evidence on behalf of respondent No. 2. The evidence on record go un-rebutted against respondent No. 2. For the aforesaid reasons, it stands established that the petitioner was engaged by respondent no.2. The petitioner has categorically deposed that he worked on daily wages from 19.1.1999 till 3.4.2004 when his services were wrongly terminated. That means during the preceding year from 3.4.2004, the petitioner worked for 240 days, hence, before terminating his services, the respondent No. 2 was legally required to serve a notice upon the petitioner or to pay one month's wages and compensation to the petitioner in lieu of such notice as envisaged under section 25-F of Industrial Disputes Act, 1947. No such steps were taken by the respondent before terminating the services of petitioner. Hence, the termination of petitioner is against the provisions of Industrial Disputes Act, 1947 and liable to set aside.

16. Accordingly, for the aforesaid reasons issue No. 1 is partly answered in favour of petitioner whereas issue no.5 is also partly answered in favour of respondents.

Issue No. 2.

17. For the reason to be recorded hereinabove while deciding issue no.1 and 5, the services of petitioner have been wrongly and illegally terminated by respondent no.2, so, he is entitled to be reinstated in service with seniority and continuity. Keeping in view facts and circumstances of the case, the petitioner is not entitled to back wages. Hence, this issue is answered in favour of petitioner.

Issue No. 3

18. For the reason to be recorded hereinabove while deciding issue no.1 and 5, the present petition is not maintainable against respondent No.1 as there is no relationship of employer and employee between respondent No.1 and petitioner. So, petitioner has no locus standi to file and maintain the petition against respondent No.1. As far as respondent No. 2 is concerned, the petitioner was engaged by respondent No. 2 and he has been wrongly terminated by respondent No. 2, therefore, petitioner has got locus standi to file and maintain the petition against respondent No. 2. Consequently, this issue is partly answered in favour of respondents.

Issue No. 4

19. I do not find any specific evidence on record to show that the petitioner is estopped to file the present petition by his own acts, conduct and deeds. In the absence of specific evidence this issue is answered against respondents.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed against respondent no.2 and as such the termination of services of petitioner by respondent no.2 w.e.f. 3.4.2004 is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages. The reference is decided accordingly in negative against the respondent no.2 only. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 16 of 2006.
Instituted on 20.2.2006.
Decided on 11.1.2013.

Naseeb Chand S/o Shri Balak Ram R/o Village Banbirpur, P.O. Lodhimajra, Tehsil Nalagarh, District Solan, HP. . . *Petitioner.*

Vs.

The Manager Component & Equipment Ltd. Plot no.120, Baddi Tehsil Nalagarh District Solan, HP. . . *Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Chauhan, Advocate.

For respondent: Shri O.P Sharma, Advocate.

AWARD

The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Naseeb Chand S/o Shri Balak Ram by the Manager Component & Equipment Ltd. Plot no. 120, Baddi, Tehsil Nalagarh, District Solan, HP w.e.f. 8.12.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. Petitioner filed the claim petition stating that he was engaged as Lab Attendant by the respondent w.e.f. 10.6.2002. He was discharging his duties honestly and to the best of his abilities. However, on 8.12.2003, the petitioner was not allowed by the respondent to do his duties and he was orally terminated without following any procedure and without giving him any notice. Consequently, petitioner raised demand notice upon which conciliation proceedings were carried

out before Conciliation Officer, Solan which led to the present reference. Petitioner prayed to set aside his termination and further prayed that he be reinstated in service with all consequential benefits.

3. The respondent contested the claim of the petitioner by filing reply wherein it was stated that conduct of petitioner was not satisfactory as he used to come late and remained absent. The petitioner himself had abandoned the job, so, he was not entitled to any relief. Consequently, respondent prayed for the dismissal of the claim petition.

4. No rejoinder was filed. On the pleadings of the parties, the following issues were framed.

1. Whether the services of the petitioner have been illegally terminated by the respondent w.e.f. 8.12.2003 without complying with the provisions of I.D Act, 1947? If so, its effect? . . . OPP.
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? . . . OPR.
3. Whether the petitioner abandoned the job? If so, its effect? . . . OPR.
4. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. It is relevant to mention that earlier the reference was decided by my Ld. Predecessor vide award dated 30.12.2009 and the award was answered in negative and against the petitioner. Petitioner preferred CWP No. 3132 of 2010-B which was decided by Hon'ble High Court vide order dated 11.10.2012 vide which the award was set aside and the case was remanded to this Court. Hon'ble High Court has directed that opportunity be given to the parties to produce on record documentary evidence in accordance with law, specifically, the copies of attendance register.

7. In pursuance of the orders of Hon'ble High Court, petitioner tendered in evidence the copies of attendance register and thereafter respondent also tendered in evidence documentary evidence.

8. After evidence of both the parties, I have heard the learned counsel for both the parties and gone through the record carefully.

9. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No. 3 No.

Relief. Reference answered in negative as the services of petitioner were wrongly and illegally terminated by the respondent per operative part of award.

Reasons for finding

Issue No. 1 & 3.

10. Both these issues are interconnected and can be disposed of by a single finding.

11. Petitioner has alleged that he worked with the respondent from 10.6.2002 to 8.12.2003 and completed more than 240 days prior to his oral illegal termination. In support of his contention, petitioner examined himself as well as PW-2 Nirmal Singh who has also worked with the petitioner. Both these witnesses deposed all the facts stated by petitioner in his claim petition.

12. On the other hand, respondent examined three witnesses, RW-1 Shri S.K Mishra, the Personnel and Administrative Manager, RW-2 Shri Praveen Swami, Senior Production Supervisor and RW-3 Shri Amit Dutt, Q.C & R&D Manager in Laboratory. All these witnesses stated that the petitioner worked as casual labourer and he was irregular in his duties and he himself abandoned the job.

13. Taking into account the evidence of both the parties on record, it is clear that petitioner worked with the respondent till December, 2003. On behalf of respondent the main arguments were that the petitioner could not produce on record convincing evidence to show that he had worked for more than 240 days in the preceding calendar year. Ld. Counsel for respondent further argued that the photocopies of the attendance register Ex. PW-1/A to Ex. PW-1/J were not duly proved, hence, the benefit of same could not be given to the petitioner.

14. After due consideration, I am in agreement with the arguments advanced by Ld. Counsel for respondent that copies of attendance register Ex. PW-1/A to Ex. PW-1/J could not be legally proved. Hon'ble High Court has remanded the case back with the direction to afford opportunities to the parties to legally produce on record the documentary evidence. The petitioner did not file the certified or authenticated copies of attendance register to show that he worked for more than 240 days prior to his termination on 8.12.2003. The petitioner could have summoned the original record and could have compared the same with the photocopies. But no such steps were taken by the petitioner.

15. However, at the same time, the documents filed on record by the respondent are relevant. The respondent filed on record Ex. RA copy of letter addressed to the SHO on behalf of respondent company revealing that on 7.7.2011 a major fire took place in the premises of respondent, Ex. RB is the copy of daily diary of Police Station Baddi dated 7.7.2011. So, it is the admitted case of the respondent that a fire had taken place on 7.7.2011 in which huge loss was caused and the record of the factory was burnt. So, it could be possible that original attendance register might have burnt in the fire. But the burden was upon the petitioner to bring on record the fact that original attendance register has been destroyed and could not be produced in evidence that is why the photocopies were produced in evidence. Petitioner did not seek the permission of the Court to lead secondary evidence. So, legally speaking the photocopies of attendance register Ex. PW-1/A to Ex. PW-1/J are not admissible in evidence.

16. But at the same time, I find sufficient evidence to reveal that petitioner had in fact worked for more than 240 days in a calendar year prior to his oral termination w.e.f. 8.12.2003. The petitioner has categorically deposed that he worked with the respondent from 10.6.2002 to 8.12.2003. His version is corroborated by his fellow worker PW-2 Shri Nirmal Singh. The respondent had taken the plea that petitioner was irregular and latecomer on his duties. So, onus was upon the respondent to show the irregular attendance of petitioner. The respondent could not produce any convincing evidence to this effect. The oral statements of witnesses examined by the respondent are not sufficient to show that petitioner was irregular and latecomer. The respondent could have produced the documentary evidence to show the aforesaid conduct of petitioner, especially the attendance register.

17. From the careful perusal of statements of the witnesses of respondent, it appears that petitioner was not regular and he used to misbehave with his superiors. Consequently, he was removed from service by Work Manager. This fact has been deposed by RW-2 Praveen Swami. Again to this effect that is no convincing evidence on record to reveal that any show cause notice was issued to the petitioner for his misbehavior or being irregular and thereafter any enquiry was conducted wherein he was found guilty.

18. The witnesses of respondent have also stated that petitioner himself has abandoned the job. Since, petitioner was the employee of respondent and in case he abandoned the job it was the duty of respondent/employer to issue notice to him asking him to join duties failing which a disciplinary action would follow. No such notice was issued by the respondent, so, it cannot be held that the petitioner himself had abandoned the job.

19. Therefore, taking into account all the aforesaid evidence on record, I am of the opinion that petitioner had in fact worked for more than 240 days prior to his oral termination on 8.12.2003 and there is nothing on record to show that he was not regular on his duties or he had misbehaved with his superiors. In the absence of any notice and enquiry in this regard, petitioner cannot be held guilty. The evidence led by the petitioner seems to be reliable and trustworthy. Since, petitioner had completed 240 days in a calendar year prior to 8.12.2003, so, it was obligatory upon the respondent to serve one month's notice or to pay him one month's wages and compensation as required under section 25-F of Industrial Disputes Act, 1947. But no such steps were taken by the respondent. Thus, there is violation of provisions of section 25-F of Industrial Disputes Act, 1947. Accordingly, the termination of petitioner is not sustainable under law and liable to set aside. Hence, for the aforesaid reasons, issue No.1 is decided in favour of petitioner whereas issue No.3 is decided against the respondent.

Issue No. 2.

20. For the reason recorded hereinabove while deciding issue no.1 & 3, the termination of services of petitioner w.e.f 8.12.2003 is hereby set aside and the petitioner is entitled to reinstatement in service with immediate effect with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is answered in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner w.e.f. 8.12.2003 by the respondent is set aside and the petitioner is ordered to be reinstatement in service with immediate effect with seniority and continuity but without back wages and the reference is decided in negative.

Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 11th day of January, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 60 of 2010
Instituted on. 1.5.2010.
Decided on 11.12.2012.

Raj Kumar S/o Shri Sohan Lal C/o Shri Om Dutt Sharma R/o Village and P.O Taksal,
Tehsil Kasauli, District Solan, H.P. . . *Petitioner.*

Vs.

The Factory Manager, M/s Anand Aircon Private Ltd. Plot No. 26, Sector-5, Parwanoo,
Tehsil Kasauli, District Solan, H.P. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjana Verma, Advocate

For respondent : Already exparte.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the verbal termination of the services of Shri Raj Kumar S/o Shri Sohan Lal by the Factory Manager, M/s Anand Aircon Private Ltd. Plot No. 26, Sector-5, Parwanoo, Tehsil Kasauli, District Solan, H.P. w.e.f. 13.1.2009 without serving him chargesheet, without holding enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not to what back wages, seniority, service benefits and relief the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim stating that he was working as an operator in the respondent company since January, 2007 and worked till 13.1.2009 when his services were illegally terminated by the M.D/Factory Manager of the respondent. The petitioner was retrenched without complying with the mandatory provisions of Industrial Disputes Act, 1947. Hence, petitioner filed the claim petition with the prayer to reinstate him with all consequential benefits.

3. The respondent was served but none appeared on behalf of respondent. Consequently, respondent was proceeded against exparte. Thereafter, the case was fixed for exparte evidence of petitioner.

4. As per record, 2.12.2010 was the first opportunity for petitioner to produce exparte evidence. However, on 2.12.2012, my Learned Predecessor was on leave, hence, the case was fixed for proper order for 3.1.2010 when my Learned Predecessor was on tour. Consequently, on 9.5.2011 was the first effective opportunity for the petitioner to produce exparte evidence. Since then till 11.12.2012, petitioner availed as many as nine effective opportunities to lead exparte evidence. On 11.12.2012, neither petitioner nor any evidence was present. However, Ld. Counsel for petitioner prayed for another opportunity which was rejected by this Court after due

consideration, since, petitioner availed more than sufficient opportunities. As the result, the petitioner evidence was closed by the order of Court.

5. Since, there was no evidence on behalf of petitioner in support of his claim, therefore, it cannot be held that he was illegally terminated by the respondent on 13.1.2009 without complying with the provisions of Industrial Disputes Act, 1947. Hence, the claim petition filed by the petitioner is dismissed and the reference is answered in affirmative and against the petitioner. Consequently, the petitioner is not entitled to any relief of service benefits from this Court. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 11th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 40 of 2010
Instituted on. 12.4.2010.
Decided on 05.12.2012.

Rajesh Kumar Dass S/o Shri Arjun Dass C/o Shri Avtar Singh Chandel, Village
Kishanpura, Tehsil Nalagarh, District Solan, H.P. . . *Petitioner.*

Vs.

The General Manager, M/s Isoloyed Engineering Technologies Ltd. Kishanpura, District
Solan, H.P. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : None.

For respondent : Shri Sandeep Dutta, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Rajesh Kuamr Dass S/o Shri Arjun Dass by the management of M/s Isoloyed Engineering Technologies Ltd. Kishanpura, District Solan, H.P. w.e.f. 30.6.2008 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what relief of service benefits including seniority and compensation the aggrieved workman is entitled to? ”

2. The copy of aforesaid reference was also sent to the petitioner/workman Rajesh Kumar Dass by the Labour Commissioner, H.P. Initially Shri Niranjana Verma, Advocate appeared on

behalf of petitioner and availed opportunities to file claim petition. After having availed so many opportunities, petitioner failed to file any claim petition, hence, my Ld. Predecessor held to dispose of the reference on merits. The case was listed to file reply by respondent. Accordingly, respondent filed reply and stated that the demand raised by the petitioner was incorrect. In fact the petitioner was on probation and joined the duties with respondent on 30.6.2007. But the petitioner was in the habit of remaining absent without any sanctioned leave. So, the respondent on 30.6.2008 terminated the services of petitioner and offered him his full & final dues. The petitioner refused to receive the same. For the absence of petitioner there was no medical certificate or any request for leave from his side. Consequently, respondent prayed to decide the reference against the petitioner.

3. Since the petitioner has not filed any claim petition and also not led any evidence, therefore, it could not be held that the respondent had terminated the services of petitioner on 30.6.2008 without complying the provisions of Industrial Disputes Act, 1947. Hence, petitioner is not entitled to any relief of service benefits from this Court. Consequently, the reference is decided in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 5th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 285 of 2002
Instituted on. 16.9.2002.
Decided on 06.12.2012.

Rajesh Sharma S/o Shri Braham Dutt, though J.C Bhardwaj, President HP AITUC H.Q
Saproon Solan, H.P. . . Petitioner.

Vs.

The Vice President, Joyco India Ltd., Village Katha, P.O Baddi, District Solan 173205.
. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Rajeev Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the domestic enquiry conducted by M/s Joyco India Ltd., Baddi District Solan, H.P against Shri Rajesh Sharma S/o Shri Brahm Dutt workman and termination of his

services w.e.f. 13.5.2000 on the basis of enquiry report is fair and justified? If not what relief of service benefits including seniority and back wages the above workman is entitled to? ”

2. The petitioner has filed the claim petition on the ground that he was serving in the respondent establishment since 22.3.1996. The workmen had filed a demand notice dated 6.10.1999 which was pending for adjudication. Despite the pendency of demand notice, the respondent illegally terminated the services of petitioner w.e.f. 13.5.2000 on the basis of one-sided illegal enquiry. In fact, the respondent did not inform the petitioner about the initiation of enquiry as well as appointment of enquiry officer. During the pendency of enquiry, no suspension allowance was paid to the petitioner. The chargesheet was not served upon the petitioner and before terminating his services proper service of show cause notice was not effected upon him. Before the initiation of enquiry, the petitioner was not supplied with the copy of documents relied upon by the enquiry officer, hence, the enquiry was conducted against the principles of natural justice. The petitioner also challenged his termination on the ground that it was in violation of section 33(2)-b of the Industrial Disputes Act, 1947 in view of pendency of demand notice dated 6.10.1999. Hence, petitioner prayed to set aside his termination orders and to reinstate him with all consequential benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein preliminary objections as to maintainability of the petition and suppression of material facts by the petitioner were raised. On merits, the respondent admitted that the petitioner was employee of the respondent. However, it was further stated that the petitioner indulged in grave misconduct during the course of his employment. In fact, petitioner remained absent from duty without any sanctioned leave w.e.f. 1.11.1999. On 11.11.1999, the respondent management had issued notice to the petitioner asking him to attend the duties, but in vain. The respondent management again issued a show cause notice dated 24.11.1999 to the petitioner asking him to resume his duties. When petitioner did not join his duties, then chargesheet dated 1.12.1999 was issued to him and he was asked to file the reply within stipulated time, but petitioner did not file any reply. Consequently, shri R.K Soni was appointed as an enquiry officer and he conducted the enquiry as per the principles of natural justice. The petitioner attended one hearing of enquiry and thereafter chose to remain absent, so exparte proceedings in enquiry were conducted and charges against the petitioner were proved. Consequently, show cause notice was issued to the petitioner informing him that the respondent intended to impose penalty of dismissal. The petitioner was asked to file the reply but again petitioner did not file any reply. The enquiry report was also sent to the petitioner, hence, petitioner was legally terminated from service in the light of legal and valid enquiry report. The respondent also stated that the petitioner was gainfully employed, hence, he was not entitled to be reinstated with consequential service benefits. Hence, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the petitioner has been illegally terminated from service w.e.f. 13.5.2000 on the basis of enquiry report? If so, its effect? . . .OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . .OPP.
3. Whether the petition in the present form is not maintainable? . . .OPR.

4. Whether the petitioner is gainfully employed? If so, its effect?

. .OPR.

5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no.1 Yes.

Issue no. 2 Entitled to reinstatement in service with continuity on the same terms and conditions but without back wages.

Issue no. 3 No.

Issue no. 4 Yes.

Relief. Reference answered in negative as the services of petitioner have been illegally terminated per operative part of award.

REASONS FOR FINDING

Issue no. 1

9. In the light of arguments of both the parties and material on record, I am of the considered opinion that the enquiry conducted against the petitioner is not sustainable under law as to my mind principles of natural justice have been violated. As the result, the termination of petitioner from service w.e.f. 13.5.2000 is not sustainable under law.

10. Both the parties have led evidence in support of their respective contentions. Petitioner examined himself in evidence whereas on behalf of respondent four witnesses were examined including the enquiry officer.

11. It is un-disputed fact that the petitioner was employee of the respondent company and he was absent from his duties since 1.11.1999. The petitioner in his cross-examination has admitted this fact that he was absent from duties since 1.11.1999. However, the petitioner has stated that he was not allowed to enter the gate of the premises by the security. It is also undisputed fact that for the aforesaid absence, the petitioner was chargesheeted and was held guilty and consequently he was terminated from service by the respondent.

12. It is the case of the respondent that a letter dated 11.11.1999 was issued to the petitioner asking him to attend the duties but this fact could not be proved with the help of evidence on record. Although, RW-3 Hardeep Rana, the Plant Manager of respondent has deposed this fact but he could not produce the copy of letter dated 11.11.1999 and further it could not be proved by the respondent that copy of said letter was supplied to the petitioner. This witness has further stated that on 24.11.1999 respondent company issued show cause notice Ex. PW-3/A to the petitioner vide postal receipt Ex. RW-3/B. But the service of this show cause notice upon the petitioner is not duly proved. RW-3 has further stated that on 22.12.1999, the respondent decided to initiate enquiry against the petitioner vide letter Ex. RW-3/D and R.K Soni was appointed as an enquiry officer. But again service of this letter upon the petitioner is not proved. So, it is not proved that petitioner was informed about the appointment of enquiry officer.

13. Ex. RP-1 is the chargesheet dated 1.12.1999 which bears the signature of Manager P&A of respondent company. It is not proved on record that copy of said chargesheet was supplied to the petitioner. The statement of petitioner is revealing that no chargesheet was served upon him. However, he has further stated that the chargesheet was shown to him on the gate of factory and he had filed the reply of the same but as per respondent witness, the petitioner did not file any reply to the chargesheet. First of all, burden was upon the respondent to show that the chargesheet was served upon the petitioner and copy of same was supplied to him but his burden could not be discharged by the respondent as there is no documentary evidence on record to show that copy of chargesheet Ex. RP-1 was supplied to the petitioner.

14. The testimony of petitioner is revealing that he was informed about the enquiry on the factory gate but no written letter was received by him. The respondent has examined RW-4 Rajesh Kumar, the enquiry officer who has stated that when he was appointed as enquiry officer, he had issued notice to the petitioner to appear before him but the petitioner did not appear. I do not find any force in this testimony of enquiry officer. The enquiry officer has placed on record the copies of proceedings of enquiry Ex. RW-4/A, Ex. RW-4/B and Ex. RW-4/C. These documents are revealing that the enquiry started on 4.1.2000 and on that day the worker/petitioner was not present. As discussed hereinabove, there is no notice to the petitioner to appear before enquiry officer on 4.1.2000. These proceedings are revealing that the notice along-with chargesheet was served through registered post to the petitioner but it was received back unclaimed. This evidence is sufficient to suggest that the chargesheet and notice was not received by the petitioner. Ex. RW-4/A is revealing that the enquiry officer had held that he would inform worker/petitioner through registered post about the next date of enquiry which was 18.1.2000. Ex. RW-4/B is the copy of proceedings dated 18.1.2000. It is revealing that on said date petitioner appeared before the enquiry officer. The petitioner has stated in his testimony that on 4.1.2000 he had gone to the place of enquiry but the enquiry officer did not turn up, so he wrote letters Ex. P/7 and Ex. P/8 to the Vice President of the respondent company. However, he has admitted that he appeared before the enquiry officer on 18.1.2000 when he made a written request vide Ex. RP-3 to conduct the enquiry in Hindi. This fact has been mentioned by the enquiry officer in proceedings dated 18.1.2000, copy of which is Ex. RW-4/B. These proceedings are revealing that next date of enquiry for evidence was fixed for 3.2.2000. But these proceedings are not revealing that the enquiry officer had supplied the documents to the petitioner as well as list of witnesses. In the absence of such compliance, the principles of natural justice have been violated as the petitioner was unable to defend himself effectively. The copy of proceedings of enquiry Ex. RW-4/C is revealing that on 3.2.2000 two witnesses were examined who tendered in evidence documents M-I to M-VI but these documents were not earlier supplied to the petitioner when he appeared before enquiry officer on 18.1.2000.

15. On 18.1.2000, the enquiry officer did not make any efforts to ask the worker/petitioner whether he intended to appoint any defence assistant. There is nothing on record to show that opportunity was afforded to the petitioner to appoint defence assistant. The denial of any such opportunity is also violation of principle of natural justice.

16. On behalf of respondent it was argued that after the conclusion of enquiry, show cause notice was served upon the petitioner along-with copy of enquiry report informing him about the out-come of enquiry and further petitioner was informed that respondent had decided to dismiss him. But there is no specific documentary evidence on record to show that in fact the copy of enquiry report was received by the petitioner and he also received show cause notice. Therefore, there is no occasion for the petitioner to file reply to enquiry report.

17. The respondent has examined two other witnesses. RW-1 Shri K.R Chauhan and RW-2 Shri Ramesh Gupta to prove the extract of attendance register Ex. RA to Ex. RA-6 and letters Ex. RA-7 and Ex. RP-6. But these documents would not make the enquiry report a legal and valid evidence.

18. In the light of my aforesaid discussion, it stands established that prior to the initiation of enquiry against the petitioner for his absence w.e.f. 1.11.1999, no show cause notice was served upon him. Further it is also proved that the chargesheet was not supplied to the petitioner. At the same time, the documents relied upon by the enquiry officer during enquiry were not supplied to the petitioner. The petitioner was not supplied with the list of witnesses by the enquiry officer. Here the law laid down by the Hon'ble Supreme Court in 2011-II-LLJ-627 (SC) is relevant wherein it has been held that:

“It was a settled principle of natural justice that if any material was to be relied in departmental proceedings, a copy of the same must be supplied to the charge sheeted employee so that he might have a chance to rebut the same.”

19. Further, it also stands established that no opportunity was given to the petitioner to appoint defence assistant. All these established facts are sufficient to hold that the enquiry was not conducted in fair and proper manner as the opportunity of being heard was denied to the petitioner. This resulted into violation of principles of natural justice. As the result, the enquiry report Ex. RW-3/E is not sustainable under law and liable to set aside. Consequently, the termination of services of petitioner w.e.f. 13.5.2000 on the basis of aforesaid enquiry report is also not sustainable and is hereby set aside and quashed.

20. On behalf of petitioner, it was argued that no suspension allowance was paid to him during enquiry. But in the light of facts of the case, the petitioner was not entitled to any suspension allowance as he was not suspended and there is no evidence on record to show that after 1.11.1999, he had attended his duties. As per record, the petitioner remained absent w.e.f. 1.11.1999 till he was terminated on 13.5.2000. So, for the aforesaid reason in the absence of any suspension order, the petitioner is not entitled to the suspension allowance.

21. The petitioner also argued that his termination was in violation of section 33(2)-b of Industrial Disputes Act, 1947 as at that time his demand notice dated 6.10.1999 was pending. The copy of demand notice Ex. P/2 is produced on record which is revealing that it was submitted from President and General Secretary of the workers union regarding the working conditions of workmen. There is nothing in it to show that specific demand pertaining to the petitioner was also mentioned. On the top of it, there is nothing on record to show that said demand notice was pending before Conciliation Officer when the termination orders of petitioner were issued. The petitioner did not produce the relevant record from the Labour-cum-Conciliation Officer to prove said allegation. Hence, in the absence of any evidence in this regard, the violation of section 33 (2)-b of Industrial Disputes Act, 1947 is not proved.

22. However, for the reasons discussed hereinabove, the termination of services of petitioner w.e.f. 13.5.2000 is not sustainable under law being against the principles of natural justice. Accordingly, this issue is decided in favour of petitioner.

Issue no. 2 & 4.

23. Both these issues are interlinked and can be disposed of by a single finding.

24. For the reason to be recorded hereinabove while discussing issue no.1, the termination of services of petitioner w.e.f. 13.5.2000 by the respondent is hereby set aside and the petitioner is held entitled to be reinstated in service with continuity on the same terms and conditions. The petitioner is not entitled to the back wages as I find sufficient material on record to suggest that petitioner is gainfully employed.

25. Although, the respondent has not produced the specific evidence to establish that at the relevant time the petitioner was gainfully employed but here the cross-examination of petitioner is relevant wherein he has admitted that he got married in 2001 and his Children are studding in Private School. He has further stated that he has got landed property also. This is sufficient to suggest that after his termination w.e.f. 13.5.2000, the petitioner was gainfully employed that is why he got married and provided education to his children's in a Private School. Accordingly, in the light of my aforesaid discussion, issue no.1 is answered in favour of petitioner whereas issue no.4 is answered in favour of respondent.

Issue no. 3

25. From the careful perusal of the record, there is nothing to suggest that the petition in the present form is not maintainable. Hence, this issue is decided against the respondent.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner w.e.f. 13.5.2000 by the respondent is set aside and the petitioner is ordered to be reinstated in service with continuity on the same terms and conditions. The petitioner is not entitled to the back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

2.1.2013.

Present : None for petitioner.
Respondent already exparte.

Today, the case was filed for the service of petitioner. The report received on notice is revealing that the service of petitioner could not be effected for want of correct address. I have perused the record. The notice to the petitioner was sent on the address given by the Labour Commissioner on the reference itself. In the absence of correct address of petitioner, it is not possible to effect her service. So, to further adjourn the case would be futile exercise. At the same time it is relevant to mention that the Labour Commissioner has informed the petitioner about the present reference by sending a copy of this reference to her. So, petitioner was having knowledge that reference was sent to this Court by the Labour Commissioner. Thus, she could have herself appeared before this Court in order to file her claim.

In the light of aforesaid facts, it appears that at present petitioner is not interested to press any claim. The following reference qua the termination of services of petitioner was received from appropriate government for adjudication:

“Whether the termination of services of Smt. Tripta Devi W/o Shri Balbir Singh R/o Village Maloh, P.O Kalohat, Tehsil Bhoranj, District Hamirpur, H.P by the Managing

Director M/s GWS health Care, Village Sansiwala, P.O Barotiwala, Tehsil Baddi, District Shimla, H.P w.e.f. 2.2.2011 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?"

In the absence of any claim petition and evidence on behalf of petitioner, it cannot be held that her services were wrongly and illegally terminated by the respondent. Hence, the reference is answered against the petitioner and the award is passed accordingly. However, liberty is granted to the petitioner to agitate her termination of services by filing an application before this Court in order to revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

2/1/2013.

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref. 54/2011

Sh Virender Thakur V/s M/s Padmawati Balaji Kasumpti.

20.12.2012.

Present : None for the petitioner.
Shri Vivek Sharma, Advocate for respondent.

It is 11.10 AM. Case caled thrice but none is present on behalf of petitioner. Be caled after lunch.

Sd/-
Presiding Judge,
Labour Court, Shimla.

Case caled after lunch.

Present : None for the petitioner.
Shri Vivek Sharma, Advocate for respondent.

Case caled again. It is 2.50 PM but none is present for petitioner. As per record the petitioner has been served but despite service none is present on behalf of petitioner. The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Virender Thakur R/o House No. C-19/100, Lower Phagli, Shimla-4, Customer Care Officer, as per demand notice drawing wages @ ` 3,000/- per month by the Manager M/s Padmawati Balaji STPI, Kasumpti Shimla-9 H.P w.e.f. 31.1.2010 without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above workman is entitled to from the above employer?"

The Labour Commissioner has sent the copy of this reference to petitioner Virender Thakur. This fact goes to suggest that the petitioner was having knowledge about the present reference. Today, despite service the petitioner is not present, therefore, it appears that the petitioner has nothing to say against his termination by the respondent. The petitioner did not file any claim petition as such there is no evidence on behalf of petitioner. Consequently, it cannot be held that the termination of services of petitioner by the respondent is illegal and against the provisions of Industrial Disputes Act, 1947. Thus the petitioner is not entitled to any relief from this Court. Accordingly, the reference is decided in affirmative and against the petitioner Virender Thakur. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
20/12/2012

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref.59/2011

Sh Mohan Singh V/s M/s Daimand Products Ltd Sirmour

18.12.2012:

Present: Petitioner in person.

Sh Gajinder Sharma, manager ,HR for the respondent.

The following reference has been received from appropriate government for adjudication.

“Whether termination of the services of Shri Mohan Singh S/o Shri Kidu Ram Village devni (Moginad)P.O KalaAmb, tehsil Nahan District Sirmour, H.P. w.e.f,27th May,2008 by he management of M/s Daimand Products Ltd. Village devni (Moginad)P.O KalaAmb, tehsil Nahan District Sirmour,H.P.without issuing chargesheet, without conducting enquiry and without complying with the provisions ofIndustrial Disputes Act,1947 is legal and justified? If not, what amount of back wages, seniorit, past services benefits, the above worker is entitled to from the above employer?”

In order to adjudicate the aforesaid reference, the petitioner availed opportunities to file the claim petition. However, today, the petitioner disclosed that the dispute has been amicably settled by the parties. On behalf of respondentShri Gajinder Sharma, Manager HR disclosed that the petitioner has left the job and now he is doing job somewhere else and for the job done by the petitioner under respondent, the respondent is ready to pay wages thereof in lump sum. The respondent handed over a cheque of SBI Kala Amb amounting to Rs.2589/-(Rs Two thousand five hundred eighty nine only) to the petitioner which was accepted by him. To this effect, statement of petitioner recorded wherein he admitted the aforesaid amount to be his full& final payment. In the light of aforesaid settlement, he prayed to decide the reference accordingly.

Since , the dispute has been amicably settled and the petitioner has received full& final payment from the respondent, the reference stands amicably settled and decided accordingly. Now, the petitioner is not entitled to any relief from the respondent in any manner whatsoever. Let a copy

of this award be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:

18.12.2012

By order,
Sd/-
Presiding Judge
Labour Court, Shimla.

10/1/2013.

Present : None for petitioner.
Shri Alok Bhardwaj, Advocate for respondent.

This reference has been received qua the termination of services of petitioner by the respondent w.e.f. 24.8.2007. After receiving the reference, the petitioner filed claim petition which was contested by the respondent. Consequently, issues were framed and the case was fixed for the evidence of petitioner. At the stage of evidence, none appeared on behalf of petitioner. Neither Ld. Counsel for petitioner nor petitioner himself came forward to join proceedings. As per record, notices were issued to the petitioner and report received back in the Court revealed that petitioner has abandoned the given address. Ld. Counsel for respondent stated at bar that respondent has got the same address of petitioner which is on the Court file. As the result, Ld. Counsel prayed to dismiss the reference.

Heard. After due consideration, I find substance in the arguments advanced by Ld. Counsel for respondent.

The following reference has been received from appropriate government for adjudication:

"Whether the action of General Manager, M/s Birla Textile (Ltd.) Baddi, Tehsil Nalagarh, District Solan, H.P. not to allowing Shri Magru Prajapati S/o Shri Prakash Prajapati to join his duty after the accident and production of medical fitness certificate and terminating his services w.e.f. 24.8.2007 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to ?"

As stated hereinabove on the aforesaid reference, petitioner filed claim petition which was contested by the respondent. On the pleadings of the parties, the following issues were framed.

1. Whether the action of the respondent in not allowing the petitioner to join his duties after the accident and production of medical certificate and thereby terminating his services w.e.f. 24-8-2007 is illegal and unjustified being in violation of the provisions of Industrial Disputes Act, 1947 as alleged ? . . .OPP.
2. If issue no. 1 is proved to what relief the petitioner is entitled to ? . . .OPP.
3. Whether the petitioner had abandoned the job at his own ? . . .OPR.
4. Relief.

The petitioner availed sufficient opportunities for evidence but thereafter remained absent and also abandoned the address available on record. This conduct of petitioner shows that he is not interested to pursue his claim petition.

Since, no evidence was led by the petitioner, hence, the aforesaid issues no 1 & 2 are decided against the petitioner. At the same time it cannot be held that the petitioner has abandoned the job at his own. Therefore. issue no. 3 is decided against the respondent.

For the aforesaid reasons, it cannot be held that the action of respondent not to allowing the petitioner to join his duties after the accident and production of medical fitness certificate and thereby terminating his services w.e.f. 24-8-2007 is illegal and unjustified and in violation of the provisions of Industrial Disputes Act, 1947. Consequently, the claim petition is dismissed and the reference is answered in affirmative and against the petitioner. The petitioner is not entitled to any service benefits from this Court. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced :
10/1/2013

By order,
Sd/-
*Presiding Judge,
Labour Court, Shimla
Camp at Solan.*

Ref. 33/2011

Smt Suman Bala V/s M/s Shivalik Agro poly products & others.

3.12.2012.

Present : None for petitioner.
Shri Paritosh Sharma, Advocate vice csl. for respondent.

Since none is present for petitioner, therefore, Ld. Vice csl. for respondent prayed that the reference be decided against the petitioner as on behalf of petitioner no claim was filed and she did not lead any evidence in order to hold that her service were wrongly and illegally terminated by her employer.

Heard. I have also gone through the record carefully. The following reference was received from appropriate government for adjudication:

“Whether Smt. Suman Bala W/o Shri Balbir Kumar has worked with M/s Shivalik Agro Poly Product Ltd., Plot no. 1-A, Sector-3, Parwanoo, District Solan, M/s Racket Banckiser India Plot no.1, Sector-3, Parwanoo, District Solan and M/s Trinetra Services, Parwanoo, District Solan, w.e.f. 26.4.2004 to 16.9.2008 as alleged in her demand notice dated 5.12.2008 (copy enclosed) ? If yes, whether termination of her services by the above employers/management w.e.f. 16.9.2009 without issuing chargesheet, without conducting enquiry and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the above employers/management?”

The copy of aforesaid reference was also sent to the petitioner/workman Suman Bala by the Labour Commissioner, H.P. Even after receiving the reference in this Court, notice was issued to her. After receiving notice, she did not put appearance, therefore, the reference was fixed for further orders to be disposed of on merits. This fact is clear from record.

After due consideration, I am in agreement/ submissions made by the Ld. Vice Csl. for respondent to decide the reference against the workman/employ Smt. Suman Bala as she did not put appearance in the Court and did not file any claim petition in support of her contention. In the absence of any claim petition and evidence in support thereof, it cannot be held that the service of petitioner/workman w.e.f. 16-9-2009 have been illegally and wrongly terminated by M/s Shivalik Agro Poly Product Ltd. Plot no. 1/A. Sector-3, Parwanoo, District Solan, M/s Recket Banckiser India Plot no. 1 Sector-3, Parwanoo, District Solan and M/s Trinetra Service, Parwanoo, District Solan, Hence, the reference is decided accordingly against Smt. Suman Bala and as such she is not entitled to any relief from this Court. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced :
3/12/2012

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

Ref. 87/2001

Samtal Workers Union V/s Samtal Colour Ltd.

2.1.2013:

Present : Sh R.K, Khida, Advocate for petitioner.
Sh Rahul Mahajan, Advocate for respondent.

Today, Ld Counsel for respondent produced on record the certified copy of judgment passed by Hon'ble High Court in CWPIIL No.11/2012 and CWP No.4159/2012-F vide which are matter stands finally decided . Ld. Counsel for petitioner stated that he has no objection if the reference is decided in view of the aforesaid order passed by the Hon'ble High Court, copy of which is Ex.C-1. He further prayed if the respondent would not implement the order of Hon'ble High Court then liberty be granted to the petitioner to revive the present case. Statement of Ld. Counsel for petitioner recorded. Accordingly , the claim stands settled amicably in the light of judgment of Hon'ble High Court Ex.C-1 as well as statement of Ld. Counsel for petitioner.

In view of said judgment, the reference stands decided accordingly and the award is hereby passed. The copy of order of Hon'ble High Court Ex.C-1 and statement of Ld. Counsel for petitioner shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced
2.1.2013

Sd/-
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 116 of 2010.

Instituted on. 27.10.2010.

Decided on 02.01.2013.

Roop Singh S/o Shru Bhajju R/o Village Juru, Sub Tehsil Kupvi, District Shimla, H.P.

..Petitioner.

Vs.

1. The State of Himachal Pradesh through Secretary Forest with Head Quarter at Shimla-2, HP.
2. The Principal Chief Conservator of Forest, Shimla-2, H.P.
3. The Divisional Forest Officer, Choppal, District Shimla, HP.
4. The Range Forest Officer, Forest Range Kanda, Tehsil Chopal, District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Dhenender Panwar, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether verbal termination of the services Shri Roop Singh S/o Shri Bhajju daily wage worker by (1) The Divisional Forest Officer, Choppal, District Shimla, HP (2) The Range Forest Officer, Forest Range Kanda, Tehsil Chopal, District Shimla, HP w.e.f. April, 1997 without serving chargesheet without holding enquiry and without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not what back wages, service benefits and relief the above named workman is entitled to? ”

2. The petitioner has filed the claim petition stating that he was engaged by the respondent as daily wages chowkidar in 1969 under Forest Range Officer, Kanda, Sub Tehsil Kupvi, District Shimla, HP and he remained as such till 1992 when respondents disengaged his services. Consequently, petitioner preferred OA No. 718/1992 before HP Administrative Tribunal and vide order dated 10.6.1992, the Tribunal ordered the respondents to reinstate the petitioner as chowkidar. Thereafter, respondents allowed the petitioner to work as daily waged chowkidar. Petitioner further stated that he completed regular service of ten years and worked for more than 240 days in each calendar year, but he was not regularised by the respondents despite the directions of Hon’ble Supreme Court. However, in 1996 the respondents again disengaged the services of petitioner and thereafter he filed OA No. 60/1996 which was transferred to Hon’ble High Court and it was disposed of for want of jurisdiction. Consequently, petitioner made a demand notice before Labourcum-Conciliation Officer and re-conciliation proceedings failed before Labour-cum-Conciliation Officer which led to the present reference. The petitioner challenged his termination being in violation of provisions of Industrial Disputes Act, 1947 as no notice was served upon him

before termination and junior workmen to him were still working under the respondent and moreover, after the termination of petitioner respondents, engaged new workers. Hence, petitioner prayed to set aside his termination orders and further prayed for all consequential service benefits.

3. The respondents contested the claim of petitioner by filing a reply wherein preliminary objection was raised that petitioner himself had abandoned the job and now he could not be reengaged as he was about 72 years old. On merits, respondents denied that petitioner was engaged in 1969. As per respondents, the petitioner was engaged in 1984 with frequent breaks in each calendar year. He did not complete 240 days in a calendar year after 1991. He was a part time chowkidar and was not daily waged workman, therefore, his services could not be regularised. Therefore, respondent stated that there was no violation of provisions of Industrial Disputes Act, 1947 in the present case. Consequently, respondent prayed for the dismissal of the claim petition.

4. No rejoinder was filed by the petitioner. On the pleadings of the parties, the following issues were framed.

16. Whether the termination of services of the petitioner by the respondents w.e.f April, 1997 is in violation of the provisions of Industrial Disputes Act, 1947? . .OPP.

17. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no. 1 Yes.

Issue no. 2 Entitled to wages from April, 1997 till the date of his superannuation with all other consequential monitory benefits.

Relief— Reference answered in negative as the services of petitioner were illegally terminated by the respondent per operative part of award.

REASONS FOR FINDING

Issue No. 1

8. After hearing both the parties and going through the record carefully, I am of the considered opinion that the services of petitioner were wrongly and illegally terminated by the respondent. Since, the petitioner has attained the age of superannuation, he cannot be reinstated in service. However, he is entitled to the monitory benefits in accordance with law.

9. From the careful perusal of the pleadings of the parties, it is undisputed that the petitioner worked as chowkidar under respondent. As per petitioner he was engaged in the year of 1969 whereas respondents stated that petitioner was engaged in the year of 1984. But regarding this controversy there is no reference. The reference in question only pertains to the termination of petitioner by the respondent w.e.f April, 1997. It is settled law that this court cannot go beyond the scope of reference, hence, the date of appointment of petitioner cannot be looked into by this Court

while adjudicating upon the present reference. As far as the plea of petitioner for his regularisation after completion of regular service of ten years is concerned the same cannot be adjudicated upon in this reference.

10. It is also undisputed fact that the petitioner was retrenched by the respondent in 1992 upon which petitioner filed OA No. 718/1992 before HP Administrative Tribunal. It is also undisputed fact that vide order dated 10.6.1992 of HP Administrative Tribunal, the respondents were directed to re-engage the petitioner as chowkidar and this order was complied with by the respondents. This fact has also been admitted by the respondents in reply.

11. Thereafter, again w.e.f. April, 1997 the petitioner was disengaged by the respondents. As per petitioner he filed OA No. 60/1996 which was transferred to Hon'ble High Court and was decided for want of jurisdiction. That means there is no order on merits from Hon'ble High Court regarding the validity of dismissal of petitioner w.e.f. April, 1997.

12. The petitioner stepped into witness as PW-1 and he has deposed all the facts discussed hereinabove stated by him in his claim petition. The petitioner examined Pw-2, Chajju Ram who is a retired Deputy Range Officer from forest department. He identified the signatures of Sunder Singh, Range Officer, Dogra another Range Officer, H.K Jain, Moti Ram and Lachi Ram other Range Officers on the certificates Ex. PA to Ex. PD. These certificates are revealing that petitioner worked under Range Forest Officer, Kanda as daily waged chowkidar w.e.f. 1969 to 1989. The respondents have disputed the aforesaid certificates as these certificates do not bear any seal or stamp of the Office of Forest Range Officer, Kanda. The petitioner did not requisition any record from the office of Range Forest Officer, Kanda to prove these certificates. It is not proved that the persons namely Moti Ram, Sunder Singh, Dogra, H.K Jain and Lachhi Ram remained as Range Forest Officer, Kanda and further it is not shown to this Court that said persons were not available when petitioner led his evidence that is why those could not be examined. On the top of it, for the adjudication of present reference, the date of appointment of petitioner is not relevant as in this reference we are not going to adjudicate the controversy whether petitioner was entitled to be regularised on the completion of continuous service of ten years.

13. Petitioner also examined PW-3 Devi Ram to prove his age to be 65 years but again it is undisputed fact that the petitioner has attained the age of superannuation. The petitioner himself has stated his age to be 65 years when he stepped into the witness box as PW-1 on 7.1.2012 and his version stands corroborated by PW-3 Devi Ram who is 90 years old and he is resident of same village Juru where the petitioner resides. The respondent could not lead any convincing evidence to rebut the aforesaid evidence of petitioner. Hence, we have to accept the age of petitioner to be 65 years on 7.1.2012.

14. On behalf of petitioner reliance was made on the mandays chart Ex. PW-1/A and Ex. PB which are pertaining to the year of 1986 to 1992. But as per reference the petitioner was terminated in April, 1997, so, we are concerned with the mandays chart of petitioner for the year of 1996-1997 i.e the preceding one year from April, 1997 to ascertain whether the petitioner had worked for 240 days in a calendar year or not which is the pre-requisite condition of section 25-F of Industrial Disputes Act, 1947 to serve one month's notice upon the petitioner before terminating his services. The respondents have placed on record the mandays chart from 1992 to 1997 Ex. PX and it is revealing that till April in 1997 petitioner worked for 110 days and from June, 1996 to December, 1996, he worked for 183 days. Thus, as per the mandays chart Ex. PX, the petitioner worked for more than 240 days in a calendar year preceding to his date of termination. Therefore, legally speaking one month's notice should have been served upon the petitioner by the respondents before terminating his services or in lieu of that petitioner should have been paid one month's wages and compensation but no such steps were taken by the respondents. Accordingly,

the termination of services of petitioner in April, 1997 is against the provisions of section 25-F of Industrial Disputes Act, 1947 and is not sustainable under law.

15. From the reply of respondents, it is clear that respondents have taken the plea that petitioner has abandoned the job. To this effect I do not find any evidence on record. Since, the evidence of respondents is revealing that petitioner was working under the respondents, so, even if the petitioner had abandoned the job, respondents should have issued show cause notice to him and thereafter, should have initiated disciplinary action against him in accordance with law before terminating his services. In the absence of any steps on the part of respondents, it cannot be held that the petitioner himself had abandoned the job.

16. The respondents have also taken the plea that petitioner was a part time worker and not a daily wages worker. Although, mandays chart Ex. RX produced by the respondents is showing that petitioner was engaged as part time workers, but no record from the office was produced in evidence in support of this plea by the respondents. On the top of it, the fact that on 10.6.1992 in OA No. 718/1992 the HP Administrative Tribunal had directed the respondents to reinstate the petitioner as chowkidar, so this fact is sufficient to suggest that petitioner was not a part time worker but he was daily waged worker under the respondents. Therefore, the plea of respondents that petitioner was a part time worker cannot be accepted.

17. It has also come in the testimony of petitioner that after his termination the junior workmen to him namely Bhagat Ram and Sahi Ram remained in service. In the cross examination of petitioner respondents have not disputed this fact. From the cross examination of petitioner it appears that respondents have taken the plea that said two persons were daily wages whereas petitioner was a part time worker. But, for the reasons discussed hereinabove the plea of respondents that petitioner was a part time worker has been rejected. Therefore, it stands proved on record that after the retrenchment of petitioner in April, 1997 the respondents continued with the services of Bhagat Ram and Sahi Ram who were junior to the petitioner. Therefore, there is violation of section 25-G of Industrial Disputes Act, 1947 which says that the last persons employed would be retrenched first. On this ground also the termination of petitioner is not sustainable under law.

18. The petitioner has also deposed that after his retrenchment the respondents engaged several chowkidars and workmen in the forest department. This testimony of petitioner is not questioned by the respondents in his cross-examination. Hence, the retrenchment of petitioner is also against the provisions of section 25-H of Industrial Disputes Act, 1947. The respondents should have given opportunity to the petitioner before employing new workmen. But in this case no such steps were taken by the respondents.

19. Accordingly, in the light of my aforesaid discussion I am not in agreement with the plea of respondents that petitioner was not a daily waged workman and he himself abandoned the job. It stands proved on record that petitioner was a daily waged workman under the respondents and he was retrenched illegally in violation of provisions of Industrial Disputes Act, 1947. Hence, his termination is not sustainable under law and the termination of petitioner is hereby set aside. Accordingly, this issue is answered in favour of petitioner.

Relief

For the reason to be recorded hereinabove, the termination of petitioner w.e.f April, 1997 by the respondents is set aside. Since, the petitioner has attained the age of superannuation and he was of 65 years old in Jan., 2012, therefore, he cannot be reinstated in service. However, he is entitled to the wages from April, 1997 till the date of his superannuation with all other consequential

monitory benefits. As far as the question of regularization is concerned, the same is hereby kept open and the petitioner is at liberty to agitate the same before appropriate forum permissible under law. Accordingly, the claim of petitioner is allowed and the reference is decided in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 2nd day of January, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

Ref No. 117 of 2009
Instituted on. 6.10.2010.
Decided on 01.01.2013.

Susheel Kumar S/o Shri Trilok Chand R/o Village Dakolar, P.O Shingla, Tehsil, Rampur,
District Shimla, H.P. . .Petitioner.

Vs.

1. Executive Director, Rampur Hydro Electric Project, Satluj Jal Vidhut Nigam Ltd.,
Jhakri, Tehsil Rampur, District Shimla, H.P.
2. Project Manager, M/s Gamon India Ltd., RHEP Pkg-1, Village Avery, P.O Nogli,
Tehsil, Nirmand, District Kullu, H.P. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri M.S Kanwar, Advocate

For respondent : Already exparte.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri susheel Kumar S/o Shri Trilok Chand by the Project Manager M/s Gamon India ltd., Avery, Tehsil, Anni, District Kullu, H.P. w.e.f. 10.5.2008 without any departmental enquiry, notice and compensation on the allegations of theft, is proper and justified? If not what relief of service benefits the aggrieved workman is entitled to? ”

2. The petitioner filed the claim petition stating that he was appointed as an operator under respondent no.2 on 21.3.2007 and he worked continuously till 9.5.2008. Thereafter, his

services were wrongly and illegally terminated on 10.5.2008 without complying with the provisions of Industrial Disputes Act, 1947. The allegations of theft were levelled against the petitioner but those could not be proved. No fair enquiry was conducted by the respondent and the petitioner was not associated during enquiry, at the same time, no opportunity was given to the petitioner to lead any evidence. Hence, entire enquiry was biased and one sided. Consequently, petitioner prayed to set aside his termination order and further prayed to reinstate him with all consequential benefits.

3. From the perusal of record, it is clear that the respondent was proceeded against exparte. Consequently, the exparte evidence of petitioner was recorded.

4. I have heard the exparte arguments and also gone through the record carefully.

5. The un-rebutted exparte evidence of petitioner is sufficient to establish that he was wrongly and illegally terminated by the respondents on 10.5.2008.

6. The petitioner has stepped into the witness box as PW-1 and tendered his affidavit Ex. PA wherein he has categorically deposed that he worked under respondent no.2 since 21.3.2007 continuously. He further deposed that his services were wrongly and illegally terminated by the respondent on 10.5.2008. His testimony is further revealing that there were allegations of theft against him and qua the same no fair enquiry was conducted by respondent no.2 as he was not associated in the enquiry and no opportunity of being heard was given to him. He also deposed that he worked continuously for more than 240 days in a calendar year prior to his termination.

7. The petitioner also tendered in evidence documents Ex. PB, copy of demand notice, Ex. PC, letter addressed by him to the Project Manager of respondent company and Ex. PD, copy of letter from Project Manager of respondent company written to the petitioner wherein allegations of theft have been levelled against the petitioner. The recital of Ex. PD is revealing that the Project Manager of respondent company has alleged that on 1.5.2008, the petitioner had stolen company's steel material from site and sold to the scrap dealer which is a serious misconduct and amounts to dismissal from service. Said letter is also revealing that the respondent company suspended the petitioner with immediate effect pending further enquiry. This letter is also revealing that the date of enquiry would be intimated to the petitioner shortly. But there is no record to show that a departmental enquiry was conducted against the petitioner by the respondent wherein the petitioner was associated and due opportunity of being heard was given to the petitioner to defend himself. The petitioner has categorically deposed that his services were terminated without hearing him, so, the departmental enquiry if any conducted by the respondent in the absence of petitioner without giving him opportunity of being heard which is not sustainable under law as it is in violation of principles of natural justice.

8. If there is no fair and proper enquiry against the petitioner, then the services of petitioner could not have been terminated without complying with the mandatory provisions of Industrial Disputes Act, 1947. The un-rebutted testimony of petitioner is sufficient proof to establish that he worked continuously w.e.f. 21.3.2007 to 9.5.2008 with the respondent. He has categorically deposed that he worked continuously for more than 240 days in a calendar year prior to his termination. So, before terminating the services of petitioner, the respondent was under the legal obligation to serve one month's notice to him or to pay one month's wages along-with compensation in lieu of such notice as envisaged under section 25-F of Industrial Disputes Act, 1947. But no such steps were taken by the respondent.

9. Consequently, for the aforesaid reasons, the termination of petitioner by the respondent w.e.f. 10.5.2008 in the absence of any fair and proper departmental enquiry and further in the absence of any notice under section 25-F of Industrial Disputes Act, 1947 is illegal and unjustified.

Therefore, said termination is not sustainable under law and is hereby set aside and the petitioner is entitled to reinstatement with seniority and continuity but without back wages. Accordingly, the claim petition filed by the petitioner is allowed and the reference is answered in negative and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages as the services of petitioner have been illegally and wrongly terminated by the respondent without complying with the mandatory provisions of Industrial Disputes Act, 1947. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1st day of January, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 57 of 2009.
Instituted on. 17.8.2009.
Decided on 02.01.2013.

Virender Kumar Pathania S/o Shri Mohinder Singh R/o Village Billian, P.O Dhayala,
Tehsil Indora, District Kangra, H.P. . . *Petitioner.*

Vs.

Managing Director M/s Pacific Electronics and Component Pvt., Ltd., Unit-1, Juddi, Baddi,
Tehsil Nalagarh, District Solan, H.P. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri O.P Chauhan, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services Shri Virender Kumar Pathania S/o Shri Mohinder Singh by the Managing Director M/s Pacific Electronics and Component Pvt., Ltd., Unit-1, Juddi, Baddi, Tehsil Nalagarh, District Solan, H.P. w.e.f. 6.6.2008 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim petition stating that he was engaged by the respondent in 2007. He worked continuously till 6.6.2008 and completed more than 240 days in a

calendar year. On 6.6.2008 he was not allowed by the respondent to resume his duties and he was asked not to come on work further. Thus, his services were illegally terminated orally on 6.6.2008. No notice was served upon the petitioner before terminating his services, which was against the provisions of Industrial Disputes Act, 1947. The petitioner raised demand notice and thereafter conciliation proceedings were held before Labour-cum-Conciliation Officer which led to the present reference. Hence, petitioner prayed that his termination be set aside and he also prayed for his dues amounting to ₹ 26,885/-, the detail of which he has filed in the claim petition.

3. The respondent contested the claim of petitioner by filing a reply wherein preliminary objections as to maintainability of petition, locus standi of petitioner being quality supervisor and abandonment of job by the petitioner were raised. On merits, respondent admitted that the petitioner was appointed on 2.5.2007. It was stated that he was appointed as quality supervisor, therefore, he was not a workman for the purpose of Industrial Dispute Act, 1947. The respondent denied that the petitioner worked continuously for more than 240 days in a calendar year. The petitioner left the job on 6.6.2008 as he joined some other industrial establishment. Consequently, respondent prayed for the dismissal of the claim petition.

4. No rejoinder was filed by the petitioner. On the pleadings of the parties, the following issues were framed.

1. Whether the services of the petitioner w.e.f. 6.6.2008 have been terminated in an illegal and improper manner in contravention of the provisions of Industrial Disputes Act, 1947 as alleged? . . .OPP.
2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . . .OPP.
3. Whether this petition is not maintainable as alleged in preliminary objection no.2? . . .OPR.
4. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no. 1 Yes.

Issue no. 2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue no. 3 No.

Relief.-Reference answered in negative as the services of petitioner were illegally terminated by the respondent per operative part of award.

REASONS FOR FINDING

Issue no.1 & 3

8. Both these issues are interconnected and can be disposed of by a single finding.

9. First of all I would like to discuss issue no.3 as to the maintainability of the petition, since, the respondent has taken the plea that petitioner was appointed as quality supervisor. Therefore, he was not a workman for the purpose of Industrial Disputes Act, 1947.

10. On behalf of respondent RW-1 Shri Bhupinder Kumar, Executive HR was examined who deposed that the petitioner was not a workman and he was performing the supervisory, managerial and administrative duty. Reliance was made on the personal bio-data of petitioner Ex. RW-1/C but this document could not make the petitioner quality supervisor under the respondent. Further, reliance was made on Ex. R-1 and Ex. R-2, letters issued by the petitioner to the Labour Inspectorcum-Conciliation officer as well as copies of proceedings wherein petitioner has been referred as quality supervisor. But to my mind these documents could not be duly proved. Here, the cross-examination of petitioner is relevant wherein he has denied that under him fifteen workmen were doing job. Although, he has admitted that he was quality supervisor but there is nothing on record to show that the petitioner was doing the job of supervisor and under him certain workmen were doing their job. At the same time there is no evidence to show that petitioner was doing the managerial or administrative job. As the result, documents Ex. R-1 and Ex. R-2 would not make the petitioner as supervisor. Further, RW-1 Shri Bhupinder Kumar in his cross-examination has admitted that petitioner used to do work which was assigned to him. It shows that the petitioner was doing manual work and he was in fact a workman under the respondent.

11. The respondent could have easily produced on record the documentary evidence to show that petitioner was a supervisor and not a workman. In the absence of any such documentary evidence and for the reasons discussed hereinabove, to my mind the petitioner was appointed as a workman by the respondent. Consequently, I am in agreement with the testimony of petitioner that he was appointed as a workman by the respondent on 2.5.2007 and did his job as a workman till 6.6.2008.

12. The petitioner has further stated that on 6.8.2008 he was not allowed to resume his duties and his services were orally terminated by saying that the respondent did not require his services. His version is duly supported by PW-2 his fellow workman who has categorically deposed that the petitioner was working with him. Moreover, the appointment of petitioner is not disputed by the respondent. The respondent has also not disputed that the petitioner worked continuously till 6.6.2008. The respondent has taken a specific plea that the petitioner himself has abandoned the job on 6.6.2008 but to this effect there is no convincing evidence on record. The general statement of RW-1 Bhupinder Kumar is not sufficient to prove the aforesaid plea. If the petitioner was working under the respondent and he had abandoned the job on 6.6.2008 then the respondent being employer was duty bound to issue notice to the petitioner and initiate action against him for his willful absence in accordance with rules. But no such steps were taken by the respondent which goes to suggest that the petitioner did not abandon the job but in fact his services were terminated as stated by the petitioner.

13. Hence, for the aforesaid reasons, it stands established that the services of petitioner were terminated by the respondent on 6.6.2008 and petitioner worked continuously w.e.f. 2.5.2007 to 6.6.2008. That means petitioner has continuously worked for more than 240 days in the preceding calendar year from the date of his termination. The witness of respondent RW-1 has admitted that w.e.f. 2.5.2007 to 6.6.2008, the petitioner had worked for more than 240 days in a calendar year. Therefore, before terminating the services of petitioner, the respondent was under the legal obligation to serve one month's notice to him or to pay one month's wages along-with compensation in lieu of such notice as envisaged under section 25-F of Industrial Disputes Act, 1947. But no such steps were taken by the respondent. Hence, the termination of petitioner is liable to set aside.

14. Accordingly, for the aforesaid reasons issue no.1 is answered in favour of the petitioner whereas issues no.3 is answered against the respondent.

Issue no. 2.

15. For the reason to be recorded hereinabove while deciding issue no.1 & 3, the termination orders of petitioner w.e.f 6.6.2008 is hereby set aside and the petitioner is entitled to reinstatement in service with immediate effect with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is answered in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner w.e.f. 6-6-2008 by the respondent is set aside and the petitioner is ordered to be reinstatement in service with immediate effect with seniority and continuity but without back wages and reference is decided in negative. Let a copy of this award be sent to the appropriate for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 2nd day of January, 2013.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN

Ref No. 45 of 2007.
Instituted on. 5.6.2007.
Decided on 31.12.2012.

Virender Kumar Sharma S/o late Shri Geeta Ram R/o Village Bitna, P.O Pinjore, Tehsil Kalka, District Panchkula (Haryana) through Shri J.C Bhardwaj, President HPAITUC, HQ Saproon, Solan, H.P. . . *Petitioner.*

Vs.

M/s Raja Forgings & Gears Ltd., Sai Road, Baddi, District Solan, H.P through its Chief Executive Officer. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri D.K Thakur, Advocate.

For respondent : Shri Ram Rattan Thakur, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services w.e.f. 19.7.2005 vide letter dated 19.7.2005 of Shri Virender Kumar Sharma S/o Shri Geeta Ram workman by the management of M/s Raja Forgings and Gears Ltd., Sai Road Baddi, District Solan after serving him chargesheet and after holding domestic enquiry is legal and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim petition stating that he was appointed by the respondent in the year of 1985 and continued till 8.5.2004. However, his termination orders were issued on 19.7.2005 on the basis of false and fabricated chargesheet. The chargesheet was served upon the petitioner on 27.9.2004 after his oral termination on 8.5.2004. In fact a reference case No. 323 of 2004 was pending for adjudication but respondent did not obtain the sanction/approval of the Court before terminating the services of petitioner. Hence, petitioner challenged his termination orders being violative of section 33-2(b) of Industrial Disputes Act, 1947. Petitioner stated that he was not allowed by the respondent to enter the gate of factory in order to join his duties on 8.5.2004. On 8.5.2004, no show cause notice was served upon the petitioner and there was no suspension order. The petitioner was not paid any suspension allowances. On 27.5.2004, the petitioner served a demand notice upon the petitioner and in order to cover its wrong, the respondent called the explanation of the petitioner vide letter dated 17.6.2004. The respondent did not give any reply to the demand notice of the petitioner. The Chief Executive Officer called the petitioner in his chamber on 8.5.2004 and asked him to submit his resignation after receiving full & final payment. The respondent offered ` 33,000/- to the petitioner and thereafter the petitioner was asked to not enter the factory gate. Before 27.9.2004, no chargesheet was served upon the petitioner. Even, the enquiry officer did not carry out the proceedings in accordance with principles of natural justice. The petitioner was not supplied with the list of witnesses and other documents. The petitioner was not given opportunity to reply the chargesheet, hence, the entire enquiry was carried out in a partial and biased manner. As the result, the termination of petitioner on the basis of said enquiry was illegal, null & void. Consequently, petitioner prayed to set aside his illegal termination order dated 19.7.2005 and prayed that he be reinstated in service with all consequential benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein it was admitted that the petitioner was employed by the respondent. The other allegations made by the petitioner, were specifically denied. It was denied that there was any violation of section 33-2(b) of Industrial Disputes Act, 1947. Respondent also denied that the petitioner was not allowed to enter into the gate of the factory on 8.5.2004. In fact, the petitioner remained absent from his duties. The petitioner was not terminated on 8.5.2004 but for his absence he was served show cause notice and thereafter proper chargesheet was served upon him and after holding a legal enquiry his services were terminated on 19.7.2005. The enquiry was conducted by an independent and impartial person wherein the petitioner was associated and the entire enquiry proceedings were carried out in the presence of the petitioner. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the allegations of respondent made in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of petitioner by the respondent w.e.f. 19.7.2005 after serving chargesheet and after holding domestic enquiry is illegal and unjustified as alleged? . . . OPP.

2. If issue no.1 is proved to what relief of service benefits and amount of compensation, the petitioner is entitled to? . . . OPP.
3. Whether the petitioner abandoned the job of his own as alleged? . . . OPR.
4. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled to reinstatement in service with seniority and continuity but without back wages by stopping one increment.

Issue No. 3 No.

Relief. Reference answered in negative as the penalty imposed upon the petitioner is too harsh per operative part of award.

Reasons for finding

Issue No. 1 & 3.

9. Both these issues are interconnected and can be disposed of by a single finding.

10. In the light of arguments of both the parties as well as evidence on record, I am of the considered opinion that the petitioner remained absent from his duties w.e.f 8.5.2004 without any intimation to the respondent, therefore, the respondent was justified to initiate disciplinary action against him.

11. The petitioner has alleged that the entire enquiry against him was one sided and conducted in a partial manner, therefore, the principles of natural justice were violated. As the result, the disciplinary proceedings are not sustainable under law. Hence, his termination on the basis of enquiry report was liable to be set aside.

12. After due consideration, I do not find any legal force in the aforesaid submission of the petitioner. The petitioner stepped into the witness box as PW-1 and he has deposed all the facts which have been stated by him in his claim petition. The petitioner has also alleged that on 8.5.2004 when he went to his duties, at 1.00 PM the CEO Shri Sandeep Goel called him and thereafter he called Shri Pradeep Kumar and Shri B.S Khanna and told them to make the full & final payment to the petitioner and said amount was approximately to the tune of ` 33,000/-. The CEO asked him to sign some documents but petitioner refused to sign the same. Consequently, the petitioner was turned out of the factory gate and thereafter he was not allowed to join his duties since, 9.5.2004. But to prove these allegations, I do not find sufficient and convincing evidence on record.

13. The petitioner has examined PW-2 Shri Satish Kumar and PW-3 Shri Brij Mohan in support of his aforesaid contention. The witness PW-2 had also worked in the factory of respondent from January, 1996 to December, 2004. Here the cross examination of PW-2 Shri Satish Kumar is relevant wherein he has admitted that in his presence, the petitioner was never turned out from the gate of the factory. This witness also admitted that the CEO did not issue any order to the effect that the petitioner be not allowed to enter the factory premises. Therefore, this specific testimony of witness of petitioner is sufficient to demolish his claim that he was forcibly turned out from the gate of factory by CEO and thereafter he was not allowed to join his duties.

14. The other witness of petitioner PW-3 Brij Mohan has stated that he was driver of Basant Roadways Kalka and the petitioner used to board his bus whenever he used to go to his duties. This witness has stated that on 8.5.2004, he was told by the petitioner that the factory gate was closed for him. But as per petitioner himself on 8.5.2004 he had gone to his duties and in the day time he was called by the CEO and it was on 9.5.2004 when he was not allowed to enter into the factory gate. Thus, the testimony of PW-3 Brij Mohan is not corroborating the version of petitioner. This witness has admitted in his cross examination that he was having intimacy with the petitioner. So, it could be possible that in view of such intimacy, this witness has stated only at the instance of petitioner in order to give undue benefits to the petitioner. Moreover, this witness did not produce any record to show that in fact he was driver of the bus in which the petitioner used to travel in order to go to his duties.

15. On behalf of respondent it is alleged that petitioner himself has abandoned the job. But this plea stands demolished as the respondent has taken the disciplinary action against the petitioner for willful absence from duties after 8.5.2004. Moreover, I do not find any convincing evidence on record to establish that petitioner had abandoned his job.

16. On behalf of respondent RW-1 Shri Sandeep Goel was examined who tendered in evidence relevant record i.e letters Ex. RW-1/A-1 and Ex. RW-1/A-2 and copy of enquiry report Ex. RW-1/A-3, another letter Ex. RW-1/A-4. He also produced the copy of chargesheet Ex. RW-1/A-5 and zimini orders of the enquiry report Ex. RW-1/A-6. The other witness of respondent, RW-2 Shri Vinod Bansal has stated that the petitioner was working under him and after 8.5.2004 he remained absent. Thereafter show cause notice was served upon the petitioner and he was chargesheeted and disciplinary enquiry was conducted against him wherein charges against him stood proved. RW-3 Shri Balwan Singh another employee of the respondent company also stated that after 8.5.2004, petitioner did not join his duties. This witness has also stated that he was deputed on the gate of the factory. There is nothing in his testimony to suggest that after 8.5.2004, the petitioner was not allowed to enter inside the factory gate. The respondent also examined RW-4 Shri Shyam Sunder the enquiry officer who has stated that he conducted the enquiry as per procedure established under law and prepared his report, copy of which is Ex. RW-1/A-3. He also proved the show cause notice Ex. RW-1/A-2. He has been cross-examined by the petitioner but his credibility could not be shattered. There is nothing on record to show that during enquiry principles of natural justice have been violated.

17. Thus, the evidence on record proved that the petitioner remained absent from his duties since 8.5.2004 and for the same show cause notice Ex. PC dated 17.6.2004 was served upon the petitioner which was replied by him vide Ex. PD wherein he leveled all the allegations against CEO which have been discussed hereinabove but could not be proved. Thereafter, chargesheet Ex. RW-1/A-5 was served upon the petitioner which was tagged with the documents relied upon by the management.

18. Although, the petitioner has alleged that he was not supplied with the documents along-with chargesheet but the proceedings of enquiry Ex. RW-1/A-6 are revealing that on the first

date of hearing before enquiry officer, the petitioner had admitted that he had received the chargesheet and documents and he did not want any other documents. These proceedings dated 30.10.2004 bear the signatures of petitioner.

Thereafter, in the presence of petitioner as well as his representative Shri Bayant Singh Chadda, the management witnesses were examined. These proceedings are further revealing that the copies of proceedings alongwith the statements of witnesses were supplied to the petitioner. Thereafter, the opportunity was given to the petitioner to produce his evidence. The petitioner examined his witnesses in defence and thereafter the enquiry officer heard both the parties and vide his report Ex. RW-1/A-3 held the petitioner guilty for absence from duty.

19. The evidence on record is revealing that before starting enquiry vide letter Ex. P/R-1 dated 27.9.2004 the petitioner was informed by the respondent about the appointment of enquiry officer. After receiving the aforesaid enquiry report, the CEO of respondent company has served a show cause notice Ex. RW-1/A-2 upon the petitioner vide which he was informed about the enquiry report. The evidence on record is also revealing that the petitioner submitted his reply to the said notice and after considering the reply of the petitioner, the respondent terminated his services vide order dated 9.7.2005 copy of which is Ex. P/R-2. Hence, I do not find any infirmity in the enquiry conducted against the petitioner. He was given the opportunity of being heard and he remained associated during entire enquiry. Therefore, it cannot be held that the enquiry was conducted in a partial manner. Hence, said enquiry report cannot be set aside.

20. For the reasons recorded hereinabove, it is not established that after 8.5.2004, the petitioner was not allowed to enter into the factory premises. The petitioner in his cross-examination has stated that he did not file any complaint against the respondent that he was not allowed to enter the factory gate. Therefore, to my mind the enquiry officer has rightly and correctly appreciated the evidence/record produced during enquiry. Since, the petitioner could not give reasonable explanation for his absence from duty, therefore, he was rightly held liable for remaining absent from his duties. However, at the same time the testimony of petitioner is revealing that at the relevant time some strike was going on and a settlement was arrived at between the management and workman vide mark PB. The respondent witness RW-1 Shri Sandeep Goel has admitted the settlement copy of which is Ex. RW-1/B dated 8.4.2004. His testimony is revealing that the dispute regarding the strike was settled. So, after said settlement the petitioner was not justified to remain absent from his duties w.e.f. 8.5.2004.

21. The petitioner has taken the plea that his termination orders were passed in violation of section 33-2(b) of Industrial Disputes Act, 1947. On behalf of petitioner it was argued that demand notice of petitioner was pending and during the pendency of such notice the respondent passed the termination orders in question. But in support of this allegation, I do not find any evidence on record. The petitioner could have summoned the relevant record from the office of Conciliation Officer to show that his demand notice was pending when his termination orders dated 19.7.2005 were passed. In the absence of any evidence in this regard, said plea of petitioner is hereby rejected.

22. Therefore, in the light of my aforesaid discussion, it stands proved that petitioner remained absent from his duties w.e.f. 8.5.2004 and for the same show cause notice was served upon him but he could not file any satisfactory reply. Consequently, he was served with chargesheet and a departmental enquiry was conducted in his presence. The entire enquiry was fair and in accordance with principles of natural justice wherein his absence from duty stood proved. At the same time, I am of the opinion that the termination of petitioner from services on the basis of absence from duty

is too harsh punishment and not in consonance with his misconduct. The punishment imposed upon the petitioner appears to be disproportionate to his misconduct.

23. Hence, in the larger interest of justice, this Court after invoking the provisions under section 11-A of Industrial Disputes Act, 1947, is of the opinion that the orders of termination is not justified, hence, the same is hereby set aside. The petitioner is liable to be awarded lesser punishment in lieu of termination keeping in view facts and circumstances of the case. For the absence from duty, the punishment of termination is not sustainable. Here, I am supported by the law laid down by Hon'ble Supreme Court in the matter of 2008-II LLJ-625 (SC) wherein the order of Labour Court holding dismissal of workman for absence to be excessive and Hon'ble Supreme Court has upheld the order of Labour Court by setting aside the dismissal of workman.

24. So, for the aforesaid reasons, the termination order of petitioner dated 19.7.2005 is hereby set aside. Taking into account all the relevant facts and circumstances of the case penalty of stoppage of one increment with cumulative effect is hereby imposed upon the petitioner and he is entitled to be reinstated in service with seniority and continuity but without back wages.

25. Accordingly, for the aforesaid reasons issue No.1 is answered in favour of the petitioner whereas issues No. 3 is answered against the respondent.

Issue No. 2.

26. For the reason to be recorded hereinabove while deciding issue No.1 & 3, the termination orders of petitioner dated 19.7.2005 is hereby set aside. However, penalty of stoppage of one increment with cumulative effect is hereby imposed upon the petitioner and he is ordered to be reinstated in service forthwith with seniority and continuity but without back wages. Accordingly, this issue is of petitioner. answered in favour of petitioner.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination from service w.e.f. 19.7.2005 the respondent is set aside and the petitioner is ordered to be reinstatement in service with immediate effect with seniority and continuity but without back wages. However, the stoppage of one increment with cumulative effect is hereby imposed upon the petitioner and as such the reference is decided in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla,
Camp at Solan.

**In the Court of Kumud Singh, HPAS, Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Dina Nath aged 48 years s/o Shri Kanshi Ram, r/o Village Hari Talyangar, P.O. Ghumarwin, District Bilaspur (H. P.)
2. Reena Kumari aged 35 years d/o Shri Nathu Ram, r/o V. P. O. Batran, Tehsil Nadaun, District Hamirpur (H. P.) presently residing in the house of Shri Purshotam Chand, r/o Village Sastar, P.O. Daruhi, Tehsil & District Hamirpur (H.P.) . . Applicants.

Versus

General public

Subject.—Notice of the Intended Marriage.

Shri Dina Nath & Reena Kumari have filed an application alongwith affidavits in the court of undersigned under Special Marriage Act, 1954 in which they stated they intend to solemnize marriage within three month.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 5-3-2013. The objection received after 5-3-2013 will not be entertained and marriage will be registered accordingly.

Issued today on 22-1-2013 under my hand and seal of the court.

Seal.

KUMUD SINGH,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Kumud Singh, HPAS, Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Baldev Singh, aged 30 years s/o Shri Mast Ram, r/o Village Rayah, Tehsil Sujanpur, District Hamirpur (H. P.).
2. Smt. Phoolan Devi, aged 28 years d/o Shri Chain Singh, r/o Village & P.O. Deem, Tehsil and District Kullu (H. P.) . . Applicants.

Versus

General public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Shri Baldev Singh & Smt. Phoolan Devi have filed an application alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 15-3-2012 at Sita Ram Ji Temple, Vijaypur, Tehsil Jaisinghpur, District Kangra (H. P.) and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 18-2-2013. The objection received after 18-2-2013 will not be entertained and marriage will be registered accordingly.

Issued today on 16-1-2013 under my hand and seal of the court.

Seal.

KUMUD SINGH,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Kumud Singh, HPAS, Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Rinku aged 28 years s/o Shri Gian Chand, r/o Village Kakriana, P.O. Didwin Tikkar, Tehsil & District Hamirpur (H. P.).
2. Sapna aged 19 years d/o Shri Ram Pal, r/o Village Powari, P. O. Shokong, Tehsil Kalpa, District Kinnaur (H. P.) . . Applicants.

Versus

General public

Subject.—Notice of the Intended Marriage.

Rinku & Sapna have filed an application alongwith affidavits in the court of undersigned under Special Marriage Act, 1954 in which they stated they intend to solemnize marriage within three months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 5-3-2013. The objection received after 5-3-2013 will not be entertained and marriage will be registered accordingly.

Issued today on 24-1-2013 under my hand and seal of the court.

Seal.

KUMUD SINGH,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Kumud Singh, HPAS, Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Suman Vikrant Attari, aged 28 years s/o Shri Joginder Singh, r/o Village Kangroo, P.O. Bohni, Tehsil & District Hamirpur (H. P.)
2. Priyanka Sharma aged 20 years d/o Shri Kundan Lal Sharma, r/o Village Banjal, P. O. Lathiani, Tehsil Bangana, District Hamirpur (H. P.) . . *Applicants.*

Versus

General public

Subject.—Notice of the Intended Marriage.

Shri Suman Vikrant Attari & Priyanka Sharma have filed an application alongwith affidavits in the court of undersigned under Special Marriage Act, 1954 in which they stated they intend to solemnize marriage within three months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 14-2-2013. The objection received after 14-2-2013 will not be entertained and marriage will be registered accordingly.

Issued today on 14-1-2013 under my hand and seal of the court.

Seal.

KUMUD SINGH,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Kumud Singh, HPAS, Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Santosh Kumar, aged 25 years s/o Shri Kashmir Singh, r/o Village Bajroh, Tehsil Bhoranj, District Hamirpur (H. P.) at present c/o Baldev Singh s/o Salig Ram, r/o House No. 96, Ward No. 9, Hamirpur (H.P.).
2. Smt. Shaili, aged 24 years d/o Shri Prem Chand, r/o Village Bajroh, P.O. Badhani, Tehsil Bhoranj, District Hamirpur (H. P.) at present c/o Baldev Singh s/o Shri Salig Ram, r/o House No. 96, Ward No. 9, Hamirpur (H.P.) . . *Applicants.*

Versus

General public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Shri Santosh Kumar & Smt. Shaili have filed an application alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 5-12-2012 at Santoshi Mata Mandir, Hamirpur and they are living as husband and wife since then, hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 14-2-2013. The objection received after 14-2-2013 will not be entertained and marriage will be registered accordingly.

Issued today on 11-1-2013 under my hand and seal of the court.

Seal.

KUMUD SINGH,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Kumud Singh, HPAS, Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Shri Farman Khaa aged 22 years s/o Shri Magal Khaa, r/o 23, Rasulpur, Tehsil Bilaspur, District Rampur (H. P.) presently residing in the house of Shri Jyoti Parkas s/o Shri Bahuta Ram, r/o Village Siyuni, P.O. Chauki Jamwalan, Tehsil & District Hamirpur (H.P.)
 2. Babli-Bi aged 19 years d/o Shri Akil Khan, r/o House No. 114, Rasalpur, Tehsil Bilaspur, District Rampur (U. P.)
- . . Applicants.

Versus

General public

Subject.—Notice of the Intended Marriage.

Shri Farman Khaa & Babli-Bi have filed an application alongwith affidavits in the court of undersigned under Special Marriage Act, 1954 in which they stated they intend to solemnize marriage within three months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 23-2-2013. The objection received after 23-2-2013 will not be entertained and marriage will be registered accordingly.

Issued today on 16-1-2013 under my hand and seal of the court.

Seal.

KUMUD SINGH,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Hamirpur, District Hamirpur (H. P.).*

**In the Court of Shri Karm Chand, Naib Tehsildar-cum-Executive Magistrate, Dharamshala,
District Kangra, Himachal Pradesh**

Case No. 4/NT/13

1. Shri Amar Deep s/o Shri K. D. Limbu, r/o V.P.O. Khanyara, Tehsil Dharamshala.
2. Smt. Samiksha K. C. d/o Shri Mahindra K. C., r/o V.P.O. Khanyara, Tehsil Dharamshala . . . Applicants.

Versus

1. General Public
2. The Registrar of Marriages

Subject.—Registration of marriage under section 8 (4) of the H. P. Registration of Marriages Act, 1996 (Act No. 21 of 1997).

PUBLIC NOTICE

Whereas the above named applicants has made an application under section 8 (4) of the Himachal Pradesh Registration of Marriages Act, 1996 alongwith an affidavit stating therein that they have solemnized their marriage on 10-11-2010 at Khanyara but has not been found entered in the records of the Registrar of Marriages Khanyara Panchayat.

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the Registrar of Marriages and now, therefore, necessary order for the registration of their marriage be passed so that their marriage is registered by the concerned authority.

Now, therefore, objections are invited from the general public that if anyone has any objection regarding the registration of the marriage of the above named applicants, they should appear before the court of undersigned in my court on 11-3-2013 at Tehsil Office Dharamshala at 10.00 A. M. either personally or through their authorized agent.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 24th day of January, 2013.

Seal.

KARM CHAND,
*Naib Tehsildar-cum-Executive Magistrate,
Dharamshala, District Kangra, Himachal Pradesh.*

ब अदालत श्री लेख राम धीमान, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, उप-तहसील धीरा,
जिला कांगड़ा, हिमाचल प्रदेश

केस नं० : 01/2013

तारीख पेशी : 20-02-2013

शीर्षक :

श्री गुलशन पुत्र श्री कशमीर चन्द, निवासी गांव गगल खास, उप-तहसील धीरा, जिला कांगड़ा, हिमाचल प्रदेश . . प्रार्थी।

बनाम

प्रधान ग्राम पंचायत गगल, उप-तहसील धीरा, जिला कांगड़ा . . प्रत्यार्थी।

प्रार्थना-पत्र अधिन धारा 13 (3) जन्म/मृत्यु पंजीकरण अधिनियम, 1969.

प्रार्थी उपरोक्त ने इस न्यायालय में प्रार्थना-पत्र दिया है कि उसका जन्म गांव गगल खास, उप-तहसील धीरा में दिनांक 25-12-1989 को हुआ है। मगर अज्ञानतावश ग्राम पंचायत गगल के अभिलेख में दर्ज नहीं है। अतः इसे दर्ज किया जावे।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को इस बारे उजर या एतराज हो तो वह दिनांक 20-2-2013 को प्रातः 10.00 बजे असालतन या वकालतन अपना उजर/एतराज हाजिर अदालत आकर पेश कर सकता है। इसके बाद कोई उजर/एतराज नहीं सुना जाएगा तथा गुलशन पुत्र श्री कशमीर चन्द की जन्म तिथि 25-12-1989 के पंजीकरण के आदेश सम्बन्धित ग्राम पंचायत गगल को पारित कर दिए जाएंगे।

आज हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

लेख राम धीमान,
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
तहसील धीरा, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता प्रथम श्रेणी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

मुकद्दमा नं० : 63/2012

तारीख दायर : 6-9-2012

श्री छेरिंग डन्डूप पुत्र स्व० श्री समीर दास, निवासी गांव रांवी, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश . . प्रार्थी।

बनाम

आम जनता . . प्रतिवादी।

दरखास्त दुरुस्ती नाम खाता/खतौनी नं० 237/663, वाका चक रांवी, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

नोटिस बनाम आम जनता।

यह दरखास्त हमारे समक्ष प्रार्थी श्री छेरिंग डन्डूप पुत्र स्व० श्री समीर दास, निवासी गांव रांवी, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश ने इस आशय के साथ प्रस्तुत की है कि अराजी खाता/खतौनी नं० 237/663, वाका चक रांवी, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश में प्रार्थी के पिता का नाम रसमी राम दर्शाया गया है, जो सही नहीं है, प्रार्थी के पिता का सही नाम समीर दास है, जिसकी पुष्टि हेतु प्रार्थी ने छाया प्रति नकल परिवार रजिस्टर, जनजाति प्रमाण-पत्र संलग्न दरखास्त कर रखे हैं जिसमें प्रार्थी के पिता का सही नाम समीर दास दर्शाया गया है। प्रार्थी अपने पिता का नाम उक्त माल कागजात में रसमी राम के स्थान पर समीर दास उर्फ रसमी राम सही व दुरुस्त दर्ज करवाना चाहता है।

अतः आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि राजस्व अभिलेख में प्रार्थी के पिता का नाम रसमी राम के स्थान पर समीर दास उर्फ रसमी राम दुरुस्त दर्ज करने बारा किसी भी व्यक्ति का कोई उजर व एतराज हो तो वह दिनांक 23-2-2012 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर अदालत आकर अपना उजर व एतराज पेश कर सकता है अन्यथा यकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 22-1-2013 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

मुकेश शर्मा,
सहायक समाहर्ता प्रथम श्रेणी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

नं० मुकद्दमा : 22/2012

तारीख दायर : 1-8-2012

श्री तारा चन्द पुत्र श्री दौलत राम, निवासी गांव डोई, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

फरीक अब्बल।

बनाम

आम जनता

फरीकदोयम

दरखास्त दुरुस्ती नाम खाता/खतौनी नं० 176/378 मिन, 138/308, 177/386, वाका चक भदराश व खाता खतौनी नं० 49/137, 50/138, वाका चक निरथ, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

नोटिस बनाम आम जनता।

दरखास्त नाम दुरुस्ती माल कागजात हमारे समक्ष प्रार्थी श्री तारा चन्द पुत्र श्री दौलत राम, निवासी गांव डोई, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश ने इस आशय के साथ प्रस्तुत की है कि उसका नाम मुताबिक ग्राम पंचायत अभिलेख, फोटो पहचान-पत्र व स्कूल रिकार्ड में तारा चन्द सही व दुरुस्त है परन्तु अराजी खाता/खतौनी नं० 176/378 मिन, 138/308, 177/386, वाका चक भदराश व खाता खतौनी नं० 49/137, 50/138, वाका चक निरथ, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश के खाना मालिक में प्रार्थी का नाम तबली राम उर्फ तारा चन्द दर्ज है, जो कि गलत है। जबकि प्रार्थी का सही नाम तारा चन्द है, जिसकी पुष्टि हेतु वादी ने राशन कार्ड की छाया प्रति आदि संलग्न दरखास्त कर रखा है। प्रार्थी अपना नाम माल कागजात में तबली राम के स्थान पर तारा चन्द उर्फ तबली राम दुरुस्त दर्ज करवाना चाहता है।

अतः आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि राजस्व अभिलेख में तारा चन्द उर्फ तबली राम दुरुस्त करने बारा किसी भी व्यक्ति का किसी भी प्रकार का कोई उजर व एतराज हो तो वह दिनांक 24-2-2013 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर अदालत आकर अपना उजर व एतराज पेश कर सकता है अन्यथा यकतरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 20-1-2013 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री कृष्ण चन्द, एच0ए0एस0, उप-मण्डल दण्डाधिकारी (प्र0), चौपाल, जिला शिमला (हि0 प्र0)

देवदत्त

बनाम

आम जनता

विषय.—स्व0 श्री रोशन लाल पुत्र उच्छबू राम, निवासी बटेवड़ी डा0 देवत, ग्राम पंचायत देवत, तहसील चौपाल, जिला शिमला, हिमाचल प्रदेश। मृत्यु तिथि 4-5-1987 का अधीन धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत मृत्यु पंजीकरण करवाने बारे।

हर खास व आम को बजरिया इश्तहार सूचित किया जाता है कि अधोहस्ताक्षरी के न्यायालय में आवेदक श्री देवदत्त पुत्र स्व0 श्री रोशन लाल, निवासी बटेवड़ी डा0 देवत, ग्राम पंचायत देवत, तहसील चौपाल ने आवेदन प्रस्तुत किया है कि उसके दिवंगत पिता श्री रोशन लाल की मृत्यु दिनांक 4-5-1987 को हो गई थी। जिसका मृत्यु पंजीकरण सम्बन्धित ग्राम पंचायत देवत में न करवा सका।

इस लिए विशेषकर ग्राम पंचायत देवत, तहसील चौपाल की आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त कथित के मृत्यु पंजीकरण के बारे कोई उजर व एतराज हो तो वह दिनांक 9-2-2013 को अथवा इससे पूर्व व्यक्तिगत रूप से हाजिर अदालत आकर लिखित तौर पर पेश अदालत करें। निश्चित तिथि के उपरान्त उठाया गया उजर व एतराज मान्य न होगा इसके अतिरिक्त निश्चित तिथि तक आम जनता की ओर से कोई आपत्ति/उजर व एतराज न आने की अवस्था में उपरोक्त व्यक्ति की मृत्यु पंजीकरण आदेश पारित करके सम्बन्धित सचिव पंचायत ग्राम पंचायत को पंजीकरण हेतु भेज दिया जावेगा।

ये इश्तहार आज दिनांक 11-1-2013 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर।

कृष्ण चन्द, एच0ए0एस0,
उप-मण्डल दण्डाधिकारी (प्र0),
चौपाल, जिला शिमला (हि0 प्र0)।

ब अदालत श्री मुकेश शर्मा, कार्यकारी दण्डाधिकारी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

मुकद्दमा नं0 : 01/2013

तारीख दायर : 11-01-2013

श्रीमती कृष्णा देवी पत्नी श्री मंगल दास, निवासी गांव खनेरी, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश प्रार्थिया।

बनाम

आम जनता

प्रतिवादी।

प्रार्थना—पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्रीमती कृष्णा देवी पत्नी श्री मंगल दास, निवासी गांव खनेरी, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि प्रार्थिया की माता श्रीमती नार दासी की मृत्यु दिनांक 2-2-1994 को रामपुर में हो चुकी है परन्तु किन्हीं कारणों से स्थानीय नगरपालिका परिषद् रामपुर के अभिलेख में इनकी मृत्यु का पंजीकरण नहीं करवा सकी है। अब आवेदिका स्थानीय नगरपालिका परिषद्, रामपुर के अभिलेख में अपनी माता श्रीमती नार दासी की मृत्यु का पंजीकरण दर्ज करवाना चाहती है।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थिया श्रीमती कृष्णा देवी की माता की मृत्यु का पंजीकरण नगरपालिका परिषद्, रामपुर के अभिलेख में दर्ज करने बारे किसी भी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 28-2-2013 को या इससे पूर्व अदालत हजा में हाजिर आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार पंचायत अभिलेख में आवेदिका की माता की मृत्यु का पंजीकरण दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 28-1-2013 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मुकेश शर्मा,
कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री मुकेश शर्मा, कार्यकारी दण्डाधिकारी, रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश

मुकद्दमा नं० : 02/2013

तारीख दायर : 22-01-2013

श्री देव राज पुत्र स्व० श्री किशोरी लाल, निवासी वार्ड नं० 4, रामपुर बुशैहर, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

प्रार्थना-पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री देव राज पुत्र स्व० श्री किशोरी लाल, निवासी वार्ड नं० 4, रामपुर बुशैहर, तहसील रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश ने इस अदालत में प्रार्थना-पत्र मय शपथ-पत्र गुजारा है कि प्रार्थी के पिता स्व० श्री किशोरी लाल की मृत्यु दिनांक 14-4-1987 को रामपुर में हो चुकी है परन्तु किन्हीं कारणों से स्थानीय नगरपालिका परिषद् रामपुर के अभिलेख में इनकी मृत्यु का पंजीकरण नहीं करवा सका है। अब आवेदक स्थानीय नगरपालिका परिषद्, रामपुर के अभिलेख में अपने पिता श्री किशोरी लाल की मृत्यु का पंजीकरण दर्ज करवाना चाहता है।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त श्री देव राज के पिता की मृत्यु का पंजीकरण नगरपालिका परिषद् रामपुर के अभिलेख में दर्ज करने बारे किसी व्यक्ति का कोई उजर या एतराज हो तो वह दिनांक 28-2-2013 को या इससे पूर्व अदालत हजा में हाजिर आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार नगरपालिका परिषद्, रामपुर के अभिलेख में आवेदक के पिता की मृत्यु का पंजीकरण दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 29-1-2013 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मुकेश शर्मा,
कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला, हिमाचल प्रदेश।

ब अदालत श्री आर० के० भारद्वाज, कार्यकारी दण्डाधिकारी, उप-तहसील कमरऊ, जिला सिरमौर,
हिमाचल प्रदेश

श्री रगीं लाल पुत्र श्री रत्ती राम, गांव जुईनजा, उप-तहसील कमरऊ, जिला सिरमौर, हिमाचल प्रदेश

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री रगीं लाल पुत्र श्री रत्ती राम ने इस अदालत में एक प्रार्थना-पत्र गुजारा है कि उसकी शादी श्रीमती नाजरो देवी के साथ हुई थी परन्तु गलती से बड़े भाई श्री बलवीर सिंह के नाम दर्ज हो गई है। इसे प्रार्थी अपने नाम दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार के मार्फत सूचित किया जाता है कि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 28-2-2013 को प्रातः 11.00 बजे इस अदालत हजा स्थित कमरऊ में असालतन या वकालतन हाजिर आकर दर्ज करा सकता है। निर्धारित अवधि के पश्चात् कोई आपत्ति प्राप्त न होने की सूरत में प्रार्थना-पत्र श्री रगीं लाल पर नियमानुसार कार्यवाही की जाएगी।

आज दिनांक 16-1-2013 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

आर० के० भारद्वाज,
कार्यकारी दण्डाधिकारी,
उप-तहसील कमरऊ, जिला सिरमौर, हिमाचल प्रदेश।

**ADVOCATE GENERAL DEPARTMENT
Himachal Pradesh, Shimla**

NOTIFICATION

Shimla, the 8th January, 2013

No.3-6/80-V-1067.— Ex post facto sanction is hereby accorded to the grant of 4 days Earned Leave with effect from 28th to 31st December, 2012 in favour of Smt. Veena Chauhan, Administrative Officer of this department.

Certified that Smt. Veena Chauhan, Administrative Officer would have continued to officiate but for her proceeding on 4 days Earned Leave and this period of leave will count for earning annual increment.

Sd/-
Advocate General,
Himachal Pradesh.